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United States Office of
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COMPILATION OF DECISIONS

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RENDERED BY THE

COMMISSIONER OF INTERNAL REVENUE

UNDER THE

WAR-REVENUE ACT OF JUNE 13, 1898.

FROM JANUARY 1, 1899, TO JANUARY 9, 1900.

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PREFATORY.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 9, 1900.

The following rulings of this office under the war-revenue act were originally published in the weekly Treasury Decisions during the year 1899.

A similar compilation of rulings for the year 1898 was found to be so useful to the Service and the public generally that large editions were called for and distributed. It is believed that the present compilation will be found equally important, bringing, as it does, the rulings up to the latest dates.

For convenience of reference, the original numbering has been retained.

Rulings which have been revoked are omitted.

G. W. WILSON, *Commissioner.*

DECISIONS UNDER WAR-REVENUE ACT.

BANKS AND BANKERS.

(See also DECISIONS 12, p. 70; 20544, p. 46; 20648, p. 77; 21395, p. 84; 21708, p. 85.)

(20645.)

Special tax—Bank.

Sums deposited by so-called special depositors, who receive as interest part of the earnings of the bank, are considered part of the working capital of a bank and are to be included in the returns to which the special tax of \$2 on each \$1,000 thereof is to be reckoned.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 27, 1899.

SIR: Your letter of the 16th instant is received, relative to the liability to special tax of the Plymouth Guaranty Savings Bank, of Plymouth, N. H., on the \$100,000 of capital advanced by certain depositors, stating that the bank terms as "special depositors" those who advance said \$100,000; that the method employed by this bank is similar to that employed by the Portsmouth Trust and Guaranty Company, which from the report of the bank examiners of the State of New Hampshire, is in substance as follows:

Certain individuals advance \$100,000 to the bank to be a guaranty fund. This takes the place of the guaranty fund of 5 per cent of the total deposits which is demanded by State law. The depositors are guaranteed interest at the rate of $3\frac{1}{2}$ per cent. Whatever of earnings over and above this interest rate there may be is divided among those who have advanced \$100,000. I find that in the past year the depositors received interest at the rate of $3\frac{1}{2}$ per cent, and that those who advanced this \$100,000 received interest at the rate of 6 per cent upon the total amount.

In reply, you are advised that I am of the opinion that this \$100,000 is clearly a part of the working capital of the bank, and that it is subject to the special tax of \$2 on each \$1,000 thereof.

Respectfully, yours,

N. B. SCOTT, *Commissioner.*

Mr. JAMES A. WOOD,

Collector Internal Revenue, Portsmouth, N. H.

(20681.)

Special tax—Banks.

Opinion of the Attorney-General in regard to undivided profits.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 7, 1899.

The appended opinion of the Honorable Attorney-General is hereby promulgated for the information and guidance of internal-revenue officers and other persons interested. Any rulings of this office conflicting therewith are modified to conform thereto.

G. W. WILSON, *Acting Commissioner.*

DEPARTMENT OF JUSTICE,
Washington, D. C., February 4, 1899.

The SECRETARY OF THE TREASURY.

SIR: In your letter of October 1, 1898, which I have the honor to acknowledge, you submit the following questions for my opinion:

(1) Are the undivided profits of a national bank to be excluded in all cases from the capital and surplus in estimating the amount of special tax required to be paid by the bank under section 2 of the war-revenue act?

(2) Are the undivided profits of a State bank to be excluded in all cases from the capital and surplus in estimating the amount of special tax required to be paid by the bank under that section?

(3) Are the undivided profits of private banks or bankers to be excluded in all cases from the capital and surplus in estimating the amount of special tax required to be paid by the bank or bankers under that section?

(4) What is the construction that should be given to the following language in paragraph 1 of that section, namely, "the amount of such annual tax shall in all cases be computed on the basis of the capital and surplus for the preceding fiscal year?"

The provision of law under which these questions arise is the following portion of section 2 of the act of June 13, 1898:

"SEC. 2. That from and after July first, eighteen hundred and ninety-eight, special taxes shall be, and hereby are, imposed annually as follows, that is to say:

"One. Bankers using or employing a capital not exceeding the sum of twenty-five thousand dollars shall pay fifty dollars; when using or employing a capital exceeding twenty-five thousand dollars, for every additional thousand dollars in excess of twenty-five thousand dollars, two dollars, and in estimating capital surplus shall be included. The amount of such annual tax shall in all cases be computed on the basis of the capital and surplus for the preceding fiscal year." * * *

I think that I can more readily answer the first three questions by giving my opinion as to what should be included for taxation than by undertaking to determine what should be excluded.

The purpose of the law is, undoubtedly, to levy an annual tax upon the business of banks and bankers, and in order to make uniformity, to apply the tax to the amount of capital employed, together with such surplus funds of the bank as are used in carrying on the business, and which, combined with the capital, constitute the basis of banking operations.

The national banking act provides for the maintenance by national banks of what is called a "surplus," which is required to be set apart by the directors of the bank from the net profits until it shall reach an amount equal to 20 per cent of the capital stock. This surplus thus constituted becomes by law, in effect, a part of the bank's capital, and this 20 per cent is the minimum amount of surplus to be maintained by a national bank. I do not conceive, however, that the amount of the capital with this surplus added would make the limit to which the taxing power is authorized to go in every instance in estimating the amount upon which the bank should be assessed. I understand the term "surplus" as applied to banks to have a broader meaning, and it should be construed to include not only that set apart as the minimum surplus, but also such amount as has been set apart by a vote of the directors, or other authorized action of the bank, to strengthen the capital, and is thus held out by the bank in its dealings with the public as a part of its banking capital. The capital of a bank, together with the surplus so set apart and used in conjunction therewith as the basis of its business transactions and its banking operations, constitutes the security upon which customers rely and which induces the public to deal with it.

I may present the matter more clearly by an illustration as follows:

A national bank with a capital stock of \$200,000 is required by law to set apart from its net profits and to maintain a surplus of \$40,000. The lowest estimate for taxation under the war-revenue act upon such bank would be upon \$240,000. But if this bank, by the action of its directors, should set apart \$100,000 more of the bank's funds to be used as a part of its banking capital, this latter amount would have to be added to the amount for taxation.

The same principle would apply to State and other banks, and, whilst there may be no State laws requiring the maintenance of a surplus on the part of State banks, yet such banks are taxable upon the amount of their capital, together with such additional surplus or funds belonging to them as may be set apart either by law or by the action of the bank authorities and used in carrying on the general business of the bank.

The undivided profits of a bank are not surplus, and can not be estimated under the law in question as a part of the bank surplus. Mr. Justice Swain, in delivering the opinion of the Supreme Court in *Rubber Company v. Goodyear* (9 Wall., 788), says:

"Profit is the gain made upon any business or investment when both the receipts and payments are taken into account."

This is the generally accepted definition of the term "profits."

So, then, if profits are to be made the basis of taxation, it might be necessary to settle the affairs of a bank before the amount subject to taxation could be ascertained. The solvency of its loans, the shrinkage of securities, depreciation in values, and all other losses would have to be taken into account before the estimate as to profits could be made.

The undivided profits of a bank signify the amount of money on hand out of which dividends may be declared, and such profits may be

in the bank to-day and, by action of the directors, distributed among the stockholders to-morrow, and thus cease to be within the control of the bank at all. It certainly could not have been the purpose of Congress to levy an annual tax upon funds of this character.

And then, so far as the taxation under the war-revenue act is concerned, it is not important whether a bank has any profits or not. It is, as before stated, the capital of the bank and other funds belonging to it, which by law or the action of the bank authorities assume the character of capital, and which the bank uses in carrying on its business, that the law has in view as a subject of taxation.

I think I have sufficiently answered the first three questions.

In the fourth question it is desired that I construe that part of the act which says:

"The amount of such annual tax shall in all cases be computed on the basis of the capital and surplus for the preceding fiscal year."

I think that I am safe in assuming that the term "fiscal year" used in this act was intended to refer to the fiscal year which is established by the laws of the United States (sec. 237, Rev. Stat.), which is as follows:

"The fiscal year of the Treasury of the United States in all matters of accounts, receipts, expenditures, estimates, and appropriations, * * * shall commence on the first day of July in each year."

And, further, section 3146, Revised Statutes, under Title XXXV, Internal Revenue, provides:

"In adjusting the accounts of collectors; accruing after June thirtieth, eighteen hundred and sixty-four, and in the payment of their compensation for services, the fiscal year of the Treasury shall be observed."

I would advise, therefore, that the tax should be computed on the basis of the capital and surplus for the fiscal year preceding the time at which the assessment is made—that is, the assessment should be on the capital and surplus in use by the bank for the year ending the 30th of June next before the tax is assessed. This method would secure more uniformity and would apply the fiscal year provided by the laws of the United States to all banking establishments which are subject to taxation under this law.

As to the amount upon which a bank should be assessed for taxation during the year, in some instances this might vary. There might be a reduction or an increase of capital or surplus, or both, during the fiscal year, which is to furnish the basis for estimating the tax—that is, a bank with a capital of \$100,000 might decrease its capital to \$50,000 or increase it to \$200,000 during the year, and changes of like nature might occur as to the surplus. In such cases, of course, some fair ascertainment of the average capital and surplus employed during the year will have to be made in order to arrive at the amount liable to assessment.

Very respectfully,

JAS. E. BOYD,
Assistant Attorney-General.

Approved:

JOHN W. GRIGGS, *Attorney-General.*

(20723.)

Special tax—Bankers and brokers.

Where persons are in business both as bankers and brokers and are members of the stock exchange, the value of the seat in the stock exchange is not to be regarded as part of their banking capital, and is not to be taken into account in reckoning the amount of special tax required to be paid by them as bankers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 18, 1899.

SIR: Your letter of the 11th instant has been received, inclosing a letter addressed to you by Herzog & Glazier, 56 Exchange place, who state that they have always considered themselves and have been considered brokers; but that they "often loan * * * surplus balance over night on call against collateral."

If at their place of business they are engaged in making such loans upon the collateral securities of stocks, bonds, bills of exchange, or promissory notes, they are bankers within the meaning of the definition in the first paragraph of section 2 of the act of June 13, 1898, and should pay special tax accordingly.

But in the opinion of this office the value of the seat in the stock exchange (about which you inquire) is not to be regarded as a part of their banking capital, and therefore is not to be taken into account in estimating the amount of special tax due.

Respectfully, yours, N. B. SCOTT, *Commissioner.*
Mr. CHAS. H. TREAT, *Collector Second District, New York, N. Y.*

(20751.)

Special tax—Banks.

Refunding of special taxes paid by banks on undivided profits.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 24, 1899.

SIR: In reply to yours of the 16th instant, you are informed that the Attorney-General has rendered an opinion to the effect that undivided profits should not have been included with capital and surplus in computing the amount of special taxes due from banks (see Treasury decision 20681, p. 8).

Claims for refunding that portion of the special tax paid by banks on undivided profits will be considered. Such claims may be made on Form 46, but if banking associations or others prepare a form better adapted to the purpose, such forms may be used, and have been found advantageous.

Respectfully, yours, N. B. SCOTT, *Commissioner.*
Mr. H. L. HERSHEY, *Collector Ninth District, Lancaster, Pa.*

(20786.)

Special tax—Change of name of bank.

Where a banking firm (not a corporation) changes its name, without any change in its membership, special tax is not required to be paid again on account of such change.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 2, 1899.

SIR: Your letter of the 25th ultimo has been received, stating that the firm of Steffens, Lowdon & Co., who opened a bank at Merkel, Tex., in August, 1898, and of whom you collected special tax and penalty in September, 1898, at a recent date "changed the name to the Bank of Merkel, successors to Steffens, Lowdon & Co.," and "claim to be identically the same people, no change at all, except in the name."

If you find this statement to be absolutely correct, and that there has been a mere change of the name of this firm, no other person or persons having been taken into the partnership, special tax is not required to be paid anew in this case, and all that is necessary herein is that you enter in your register and Record No. 10 of special-tax payers this change of name.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Mr. P. B. HUNT, *Collector Fourth District, Dallas, Tex.*

(21152.)

Special tax—Bankers and brokers.

The advancing or loaning of money by brokers on the collateral security of stocks, if these loans or advances are confined by them strictly to customers who have given them, as brokers, orders for the purchase of stocks, and the collateral is held solely to secure themselves in filling such orders, is not regarded as involving them in special-tax liability as bankers within the meaning and intent of the statutes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 12, 1899.

SIR: Your letter of the 6th instant has been received, inclosing a letter addressed to you by Wilson & Watson, whose letter heads declare them to be "Bond and stock brokers, No. 6 Wall street, New York," submitting the question whether they are brokers or bankers under the second section of the act of June 13, 1898. They contend that they are brokers and not bankers, and state the facts in regard to the business carried on by them as follows:

On May 1 we formed a copartnership under the firm name of Wilson & Watson, to do a general bond and stock brokerage business.

Our capital is \$80,000 cash and a membership in the New York Stock Exchange. We shall have no deposits subject to check or draft. We will be constant borrowers of money for others, lending our name for a consideration of approximately 1 per cent.

We buy securities for customers either to be paid for by them or on margins, supposedly large enough for us to borrow from others the deficiency between market value and margin. If said margin is temporarily insufficient to carry securities, we piece same out, which might be construed "money is advanced or loaned on stocks," etc. We make no discounts and buy no paper.

The first paragraph of section 2 of the act of June 13, 1898, requires that every person shall be regarded as a banker, and shall pay special tax accordingly, who has a place of business where money is advanced or loaned on the collateral security of stocks, bonds, bullion, bills of exchange, or promissory notes.

Messrs. Wilson & Watson, it is understood, advance or loan money on the collateral security of stocks left with them by their customers; but if these loans or advances are confined by them strictly to customers of theirs who have given them, as brokers, orders for the purchase of stocks, and the collateral is held solely to secure themselves in filling such orders, this office, as at present advised, regards these transactions as constituting part of their business as brokers, and not as involving them in special-tax liability as bankers within the meaning and intent of the statute.

Respectfully, yours, G. W. WILSON, *Commissioner*.

Mr. CHAS. H. TREAT, *Collector Second District, New York, N. Y.*

(21224.)

Special tax—Undivided profits of banks.

What are to be regarded as "undivided profits."—Revised form for making a return.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 31, 1899.

SIR: Your letter of the 23d instant has been received, referring to the prescribed form for banker's return (No. 457), and inquiring:

- (1) What are to be regarded as "Undivided profits excluded from above as not subject to tax?"
- (2) What portion of undivided profits held by banks assumes the character of capital and shall be included in return in surplus?

In reply, you are hereby advised that all undivided profits which, by law or by action of the board of directors or by any officer of the bank authorized thereunto, are set apart and used in the business of banking must be included in the return.

The printed form will be revised so as to set forth, after the statement of the sum total of capital and surplus, and any funds set apart as hereinbefore stated, that "no other funds belonging to this bank have been set apart either by law or the action of the bank authorities and used in carrying on the business of the bank."

The footnote in the return will be changed to read:

Undivided profits set apart as above stated and used in the banking business assume the character of capital and are taxable; they should be included on this return in "Surplus."

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. B. F. PARLETT,
Collector Internal Revenue, Baltimore, Md.

(21284.)

Special tax—Returns of banks.

Explanation of revised Form No. 457, with reference to the clause relating to undivided profits.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 20, 1899.

SIR: I have received your letter of the 13th instant and accompanying brief, submitting, in behalf of your clients, objections to the newly revised Form No. 457 for return by banks of the amount of their capital, etc., on which the special tax required to be paid by them is to be reckoned.

You object to the language of this form requiring the bank official rendering the return of the amount of capital and surplus to make oath further that "no other funds belonging to this bank have been set apart either by law or the action of the bank authorities and used in carrying on the general business of the bank."

You also object to the requirement in this form of a statement of the amount of "undivided profits excluded from above as not subject to tax."

Referring to the opinion of the Attorney-General, on authority of which the Form 457 has been revised, you say:

An examination of that opinion will clearly show that the language of the writer "set apart either by law or the action of the bank authorities and used in carrying on the general business of the bank" is employed by him not with reference to national banks, but in his discussion of the proper course to pursue in respect to "State and other banks."

To this my reply is that, in view of the provisions of the law imposing special tax on banks, there can be no course pursued in respect to State and other banks that must not also be pursued with reference to national banks. So far as this question of special tax is concerned, national banks are on the precise footing of private banks and other banks existing under State laws, and return on the same form must be made by each and all of these banks.

The Attorney-General in his opinion, with reference to the method of ascertaining the amount of special tax required to be paid by a bank, gives the following illustration:

A national bank with a capital stock of \$200,000 is required by law to set apart from its net profits, and to maintain, a surplus of \$40,000. The lowest estimate for taxation under the war-revenue act upon such bank would be upon \$240,000. But if this bank, by the action of its directors, should set apart \$100,000 more of the bank's funds to be used as a part of its banking capital, this latter amount would have to be added to the amount for taxation. The same principle would apply to State and other banks, etc.

This construction of the law has been adopted by this office as the correct interpretation of the statute, and Form 457 has been prepared in accordance therewith. It is obligatory upon all banks to make this sworn return and to accept this construction of the statute as conclusive until hereafter in some suit brought a judicial interpretation shall have been given contrary to this and affirmed by the Supreme Court.

You say that—

The undivided profits of a national bank are * * * the proceeds of the earnings of the bank over and above all demands to be made upon such proceeds. There is no "setting apart" of undivided profits other than such as is added to the surplus by vote of the directors. Of course, all the available assets of the bank are used in carrying on its general business. * * * Besides, these undivided profits can not by any possibility enter into the computation unless they are used or employed as capital or surplus. They can not be used as capital or surplus unless set apart as such by vote of the directors.

All that it is necessary to say in reply to this is that no part of the undivided profits of any bank (whether national bank or private bank) is to be included in the amount of capital and surplus on which the special tax to be paid is to be reckoned, except such as have by vote of the board of directors been authorized to be set apart and used by the bank officers in the general business of banking. And the meaning of the language in the form, namely, "no other funds belonging to this bank have been set apart either by law or the action of the bank authorities and used in carrying on the general business of the bank," is that there has been no vote by the board of directors of the bank authorizing the undivided profits, or any portion of them, to be made use of in the business of banking.

The Attorney-General, in his opinion, says:

The undivided profits of a bank signify the amount of money on hand out of which dividends may be declared, and such profits may be in the bank to-day and, by action of the directors, distributed among the stockholders to-morrow, and thus cease to be within the control of the bank at all. It certainly could not have been the purpose of Congress to levy an annual tax upon funds of this character.

The undivided profits thus described are not "set apart" by formal action of the board of directors for use in the banking business; and, therefore, even though thus used from day to day, until distributed among the stockholders in the shape of dividends, they are not required to be included with the funds upon which the special tax is to be reckoned.

With this explanation, your suggestion that the bank officers may regard the "phraseology of the form" as "vague and misleading" is not well founded; and as to your objection that "even if the undivided profits either wholly or in part are set apart and used to carry on the general business of the bank, they can not legally be made to enter into the computation of the sum necessary to determine what the capital and surplus of the bank may be," it is entirely without support in view of the construction given to the law by the Attorney-General, if there has been formal action by the board of directors of the bank by which these undivided profits, or a part of them, are "set apart" for such use.

You object also to the language of the form as to "undivided profits excluded from above as not subject to tax" on the ground that there is no authority of law for demanding "a return from national banks of the amount of their undivided profits not subject to tax."

Even if this be true, the mere statement, in the return, of such undivided profits, for the fuller information of this office, ought not to be objected to by any bank officials who have no special reasons for withholding this information from the Internal Revenue Bureau. Such a statement can not subject them to any increase of special tax liability; and as it is the practice of banks from time to time to make public statements as to their surplus and undivided profits, it does not seem that any great additional labor is required in order to make such a statement to this office in return Form No. 457.

But while this point is immaterial, you may inform your clients and others representing banks that there will be no change made in the revised form so far as it relates to the statement under oath (after statement of capital and surplus) that "no other funds belonging to this bank have been set apart either by law or the action of the bank authorities and used in carrying on the general business of the bank." This statement, under oath, is essential under the construction given by this office to the law.

Respectfully, yours,
Mr. FRANK W. HACKETT, *Washington, D. C.*

G. W. WILSON, *Commissioner.*

(21421.)

Special tax—Banks.

A company, one branch of whose business is the banking business, but whose capital is employed without the separation and assignment of any particular part of it to the business of banking, is required to pay special tax reckoned upon the basis of its entire capital and surplus for the preceding fiscal year.—A bank, even though its officers make return that no capital or surplus is employed in its business, is required to pay special tax under paragraph 1 of section 2, act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 25, 1899.

SIR: I have received your letter of the 14th instant, inclosing a return made by Mr. Edwin Warfield, president of the Fidelity and Deposit Company of Maryland, on banker's return Form No. 457, revised, in which he declares simply that "said company has had none of its capital or surplus used or employed in the business of banking during the fiscal year ended June 30, 1899."

Mr. Warfield, in his letter of the 13th instant transmitting this return, incloses an opinion rendered by Mr. Bernard Carter, one of the counsel of the Fidelity and Deposit Company of Maryland, and upon the strength of that opinion declares that his company, although one branch of its business during the preceding fiscal year is admitted by him to have been the business of banking, as defined by paragraph 1 of section 2 of the act of June 13, 1898, is not involved in any special-tax liability as a banker, and, therefore, declines to pay the tax.

Mr. Carter, in his opinion, quotes the provision of paragraph 1 of section 2 of the act of June 13, 1898, that "bankers using or employing a capital not exceeding the sum of \$25,000 shall pay \$50; when using or employing a capital exceeding \$25,000, for every additional \$1,000 in excess of \$25,000, \$2, and in estimating capital, surplus shall be included," and that "the amount of such annual tax shall in all cases be computed on the basis of the capital and surplus for the preceding fiscal year," and argues that "as the paragraph now under consideration of the revenue law imposes the tax therein mentioned only on bankers using or employing a capital in their said banking business, and as this company (the Fidelity and Deposit Company of Maryland) does not use or employ any of its capital in any way whatsoever in the prosecution of the banking business carried on by it, it is not required to pay any tax mentioned in said paragraph."

In the opinion of this office, the construction given by Mr. Carter to this paragraph of the statute defining bankers is erroneous. The provision of the statute that "the amount of such annual tax shall in all cases be computed on the basis of the capital and surplus for the preceding fiscal year" is held to relate only to all cases of banks that had a capital and surplus for the preceding fiscal year; and as to

other banks, which, though engaged in business during the preceding fiscal year, had no capital and surplus, they are required to pay special tax, but only the special tax of \$50.

That the clause of the statute defining bankers above quoted is not to be construed as manifesting the intention of Congress that banks having no capital and surplus for the preceding fiscal year should not pay any special tax, seems to me very clear when reference is had to the proviso at the close of paragraph 1 of section 2 of the act of June 13, 1898, which relieves a savings bank "having no capital stock" from special tax only in case "its business is confined to receiving deposits and loaning or investing the same for the benefit of its depositors, and which does no other business of banking."

As it is manifest from this that a savings bank, though having no capital stock for the preceding fiscal year, is required to pay special tax as a bank when it does not bring itself within this express exempting provision, it follows that every other bank, though engaged in business during the preceding fiscal year without capital and surplus, must be required to pay special tax.

The position thus taken by this office will be adhered to until a contrary interpretation shall have been given to this statute by the Supreme Court of the United States.

You will please return to Mr. Warfield the sworn statement made by him, and inform him that it can not be accepted; and that as the Fidelity and Deposit Company of Maryland is by its charter authorized to carry on, as one branch of its business, "the business of receiving money on deposit, subject to be paid on draft or check, and also the business of advancing or loaning money on stocks, bonds, bills of exchange, or promissory notes," etc. (as stated by Mr. Carter in his opinion), it should make return on Form 457 and pay special tax as a banker.

As it appears that this company has a paid-in capital of \$1,000,000, which is partly in the building in the city of Baltimore in which it carries on its business, and partly invested in first-class securities, and also has a surplus, the return should be made for estimation of the special tax due on the basis of this entire capital and surplus.

The statement that this banking business is conducted only on the deposits received from its customers is not to be accepted.

If this company refuses to make the sworn return on the basis of this capital and surplus, you are hereby instructed to send in an estimate for assessment of the special tax and penalty based upon the admitted capital of \$1,000,000 and such surplus capital employed by the company during the preceding fiscal year as you shall be able to ascertain from the best information available.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,

Acting Commissioner.

Mr. B. F. PARLETT, *Collector Internal Revenue, Baltimore, Md.*

(21782.)

Special tax—Banks.

Every bank (except a savings bank coming within the express exempting provision of the statute) is required to pay special tax even though no capital is employed in its business.—A separate special tax must be paid for every branch bank or separate place at which the business of banking is carried on.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 18, 1899.

GENTLEMEN: In reply to your letter of the 10th instant concerning the Hamilton Bank of New York City, which has paid special tax for its principal place of business under the act of June 13, 1898, and "has a small branch for deposit and payment of moneys, but has no capital," and, therefore, as you contend, is not required to pay special tax for this branch, you are hereby referred to the first clause of section 3235, Revised Statutes, which is extended to special taxes under the war-revenue act by section 31 of that act, and under which clause an additional special tax is expressly required to be paid for each distinct and separate place of business. This applies, of course, to the banking business as well as to every other business for which the law requires special tax to be paid.

Your suggestion that the statute requires special tax to be paid for the banking business only when it is carried on with a capital, and that, therefore, a branch bank using no capital is not required to pay special tax, is, in the opinion of this office, erroneous.

The construction which this office has given to that clause of paragraph 1 of section 2 of the act of June 13, 1898, providing that "bankers using or employing a capital not exceeding the sum of twenty-five thousand dollars shall pay fifty dollars," and that "the amount of such annual tax shall in all cases be computed on the basis of the capital and surplus for the preceding fiscal year," is that it relates only to those bankers who had been engaged in business during the preceding fiscal year with a capital and were continuing the same business the following year; and that it is not the meaning or intent of the statute to permit the carrying on of the business of banking without the payment of special tax in cases where no capital is used. It is, therefore, the settled ruling here (until a different interpretation shall have been given to the law by the courts) that for every separate place of business at which banking is carried on without capital the special tax of \$50 must be required to be paid.

By reference to the proviso at the close of paragraph 1 of section 2 of the act of June 13, 1898, it will be seen that the only bank which the statute exempts from the payment of special tax is a savings bank "having no capital stock;" and even such a savings bank is not relieved from the payment of the special tax unless it is a bank whose

business "is confined to receiving deposits and loaning or investing the same for the benefit of its depositors, and which does no other business of banking."

Respectfully, yours, G. W. WILSON, *Commissioner*.
Messrs. BLANDY, MOONEY & SHIPMAN, *New York, N. Y.*

BEER.

(See LIQUORS.)

BILLIARDS, ETC.

(See also DECISION 20486, p. 120.)

(20505.)

Special tax—Billiard or pool tables.

Special tax is not required to be paid for any tables on which games are played unless they are billiard or pool tables, as contemplated by paragraph 9 of section 2 of the war-revenue act.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 6, 1899.

SIR: Your letter of the 31st ultimo has been received, presenting the question of the special-tax liability of proprietors of "tables known as Manhattan pool tables." You say:

They are not regular billiard or pool tables, but a table set full of pins, and a ball is shot which comes back and strikes these pins and bounds from one to another and finally lands in a receptacle at the bottom of the table.

From this description it appears that these table are neither billiard nor pool tables; and this being so, notwithstanding the fact that they are called "Manhattan pool tables," they are not subject to special tax under the provisions of paragraph 9 of section 2 of the act of June 13, 1898.

However desirable it may be that special tax should be imposed for such tables as you describe, or for bagatelle tables or other like tables used for playing games, the language of the statute imposing special tax merely on billiard tables and pool tables can not be extended to any other than the tables expressly mentioned.

Respectfully, yours, N. B. SCOTT, *Commissioner*.
Mr. JOHN C. ENTREKIN,
Collector Eleventh District, Chillicothe, Ohio.

(20784.)

Special tax—Games.

The Italian game called "boccie," not being among the games mentioned in the ninth paragraph of section 2, act of June 13, 1898, special tax is not required to be paid therefor under that paragraph.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 1, 1899.

SIR: In reply to a letter addressed to this office on the 17th ultimo by H. B. Mayhew & Co., 424 Battery street, San Francisco (who have to-day been referred to you), concerning the Italian game called "boccie," which, they state, is "played with eight balls of one size and one of a much smaller size, * * * the small ball being rolled or placed in one end of the inclosure or lot, and the players then endeavoring to roll the large balls in close proximity to the small one, the one who places the balls the nearest winning the game," you will please inform them that as this does not come within the description of any of the games mentioned in the ninth paragraph of section 2 of the act of June 13, 1898, special tax is not required to be paid therefor under that paragraph, which provides for the payment of special tax only for bowling alleys and billiard and pool tables.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Mr. J. C. LYNCH, *Collector First District, San Francisco, Cal.*

BILLS OF LADING.

(See also DECISION 13, p. 234.)

(20914.)

Stamp tax—Bills of lading operative as warehouse receipts.

Conditions under which a bill of lading will be operative as a warehouse receipt and subject to taxation as such.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 24, 1899.

SIR: This office is in receipt of your letter of March 20, 1899, in which you state that the Northern Central Railroad Company does a general storage warehouse business at O'Donnel's wharf, Baltimore.

This company receives goods from New York and other cities and gives to the shipper a bill of lading covering the shipment. The goods are then shipped to Baltimore and stored in this warehouse. The

shipper sends to the consignee the bill of lading covering the shipment. The consignee, if he so desires, can leave the goods on storage after their arrival. When the consignee desires to remove these goods to his place of business or to reship them, the original bills of lading are presented to the railroad company's storage warehouse, storage charges collected, and the goods turned over to the consignee. You ask if, under these circumstances, any taxation accrues on the bills of lading as warehouse receipts.

In reply, you are advised that there does not. This is not such a storage as would subject the bill of lading to taxation as a warehouse receipt. In this instance, the instrument is operative as an evidence of the shipment of and title to the goods, and is not issued with the intention of operating as a warehouse receipt or as an evidence of storage.

It is well known that in shipment of freight and express matter the presumption is that the goods will be delivered or called for on arrival. If, however, this is not done and they remain any length of time, common carriers usually make a storage charge for the goods if not called for within a certain period. In such a case no instrument is issued as a warehouse receipt, nor is any instrument strictly operative as such, although under these peculiar circumstances a storage may arise for which a charge is made.

You state another case as follows: The railroad company receives goods for shipment from their patrons and allow them to remain in the storage warehouse for an indefinite length of time before shipment. The shipper of the goods has issued to him a bill of lading, and on the issuance of this instrument he pays the charges for the storage, and, in addition, pays the transportation charges, or these transportation charges are collected from the consignee, and you ask, Is the bill of lading in this instance subject to taxation as a warehouse receipt?

In reply, you are informed that it is. The intent of the shipper and the conditions surrounding this transaction are entirely different from those in the case first stated. The primary object in this last instance is to store these goods and at the end of a certain length of time, or an indefinite length of time, they are to be shipped to the consignees. If they are received with the intent of storage and a storage charge made and paid, in the opinion of this office, the bill of lading would operate as a warehouse receipt, and should be construed as such.

Respectfully, yours, G. W. WILSON, *Commissioner.*

Mr. G. W. TROWBRIDGE, *Revenue Agent, Baltimore, Md.*

(21169.)

Stamp tax—Export bills of lading.

No obligation imposed on transportation companies to issue export bills of lading, but when such bills are issued they must be stamped.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 18, 1899.

SIR: I have to acknowledge the receipt of your letter of the 20th ultimo, in regard to the stamping of export bills of lading.

As there seems to be some confusion in regard to what are the requirements of the law in this respect among officers as well as shippers and transportation agents, I will endeavor to explain the law as understood by this office.

Schedule A of the war-revenue act contains the following paragraph:

Bills of lading or receipt (other than charter party) for any goods, merchandise, or effects, to be exported from a port or place in the United States to any foreign port or place, ten cents.

Under this paragraph it is held that no obligation is imposed on any transportation company to issue an export bill of lading, or receipt for goods exported. If, however, a bill of lading or receipt is issued, it must be stamped by the party issuing the same with a 10-cent stamp.

If, in any single case of shipment, two or more export bills of lading are issued, each having the force and effect of an original, each of these must be stamped; but if duplicates or copies are made or issued of any original export bill of lading, and such duplicates or copies are so marked, they do not require stamps.

In the case stated by you, where the agent of the Star Union Line issues two export bills of lading for a shipment of grain to a foreign port, and these two bills of lading are given to the shipper, and the shipper attaches one of these export bills of lading to his draft, which goes abroad, and the other export bill of lading he sends by another vessel to provide against the possible loss of the first, and on this second export bill of lading are the words "one accomplished, the other stands void,"¹ both are originals, and should be stamped with a 10-cent stamp.

When a shipment is made from an interior place in the United States to any foreign place, the export bill of lading or receipt issued at the interior place of exportation must be stamped with a 10-cent stamp, but no stamping is required on account of the domestic transportation to the seaboard.

As to who shall pay for the stamps required on export bills of lading or receipts, the law does not designate which of the parties to an

¹ The ruling that duplicate export bills of lading must in all cases be stamped has been modified by ruling 21496, which follows.

instrument should furnish the necessary stamp, nor does the Commissioner of Internal Revenue assume to determine that the stamp shall be supplied by one party rather than another. However, if an instrument subject to stamp duty is issued without having the necessary stamp affixed thereto, the person who issues said instrument is liable to a penalty.

All rulings in reference to export bills of lading or receipts inconsistent with the above are hereby modified to conform therewith.

Respectfully, yours, G. W. WILSON, *Commissioner.*

Mr. A. J. DAUGHERTY, *Collector Internal Revenue, Peoria, Ill.*

(21496.)

Stamp tax—Export bills of lading.

Only one stamp required upon bills of lading issued in sets of two or more covering but one shipment.—Former ruling modified.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 12, 1899.

SIR: Your letter of the 29th of June, asking for a reconsideration of the ruling in regard to the taxability of export bills of lading made by this office under date of May 18, 1899, and published as Treasury decision 21169 (page 23), has been received and carefully considered.

The statute as found in Schedule A is as follows:

Bills of lading or receipt (other than charter party) for any goods, merchandise, or effects, to be exported from a port or place in the United States to any foreign port or place, 10 cents.

The portion of the ruling of May 18 which is particularly objected to is in this language:

If in any single case of shipment, two or more export bills of lading are issued, each having the force and effect of an original, each of these must be stamped, but if duplicates or copies are made or issued of any original export bill of lading, and such duplicates or copies are so marked, they do not require stamps.

It is contended by you that in view of the long prevalent practice of issuing each bill of lading covering goods to be exported in a set of two or more, the words *bills of lading*, found in the law, being in the *plural*, and made equivalent alternative for the word "receipt" *employed therein in the singular*, seems specially significant as indicative that the lawmaking power was fully acquainted with the common commercial use, and designedly used the word "bills" as the one applicable to the situation.

It is also pointed out that in the stamp act whenever it is intended to stamp duplicates, as in the case of domestic bills of lading, or to

stamp each instrument where such instruments are usually issued in sets, as in the case of foreign bills of exchange, such stamping is specially provided for. The conclusion is, therefore, reached that Congress intended to require only one stamp of 10 cents for export bills of lading covering one shipment, whether issued singly or in sets, as is usually the case. Additional force is lent to this conclusion by the fact that in the act of July 1, 1862, where this provision first appears in the statutes, it is presented as follows:

Bill of lading or receipt (other than charter party) for any goods, merchandise, or effects, to be exported from a port or place in the United States to any foreign port or place, ten cents.

The same provision is reenacted *verbatim et literatim* in the act of June 30, 1864, and as the framers of the act of June 13, 1898, had both of the above-mentioned acts before them, the changing of the word "*bill*" to the plural would indicate an intention on the part of the lawmakers to impose in the present act but one tax of 10 cents on all the bills of lading covering any one shipment for export, and to change the former provision in this respect.

In view of the above considerations, it is now held that bills of lading for export, whether issued singly or in sets of two or more covering one shipment, will require but one stamp of 10 cents. In cases of export bills of lading issued in sets of two or more, the bill retained by the consignor must be stamped and a notation made on the other bills of the same set, giving the number of bills issued covering the same shipment and a statement that the bill retained by the consignor has been duly stamped.

Treasury decision 21169 (page 23), so far as inconsistent with the above ruling, is hereby revoked.

Respectfully, yours,

G. W. WILSON, *Commissioner*.

Mr. JAMES A. LOGAN,

General Solicitor, Pennsylvania Railroad,

Philadelphia, Pa.

(21645.)

Stamp tax—Domestic bills of lading.

Carriers not required by law to issue duplicates of domestic bills of lading, but if they do issue them they must stamp them with a 1-cent stamp.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., October 7, 1899.

SIR: I have the honor to acknowledge the receipt of your communication of the 13th ultimo, relative to the stamping of duplicate domestic bills of lading issued by carriers, and asking for a specific decision in regard to the obligation of carriers in this respect.

In reply, you are advised that by the provisions of Schedule A, act

of June 13, 1898, a carrier is required under penalty to issue a bill of lading or other evidence of receipt for all goods received for transportation (but not for export) and stamp the same. He is under no such obligation to issue *duplicates* of such bill of lading as he is in respect to the original, but if he issues a duplicate or duplicates, he must stamp each with a 1-cent stamp, and if he fails so to do he is liable to the penalties prescribed by section 7 of said act.

The above ruling applies to goods shipped by officers of the United States, as well as by all other persons, and this office finds no authority under the law to exempt the instruments referred to from the stamp tax when issued to United States officers.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

QUARTERMASTER-GENERAL, U. S. A., *Washington, D. C.*

(21688.).

Stamp tax—Freight receipts.

Memorandum receipts for freight, afterwards exchanged for bills of lading, must be stamped when issued.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 21, 1899.

SIR: I have the honor to acknowledge the receipt of your letter of the 3d instant, signed by yourself, Geo. R. Peck, general counsel Chicago, Milwaukee and St. Paul Railroad Company; William Brown, general solicitor Chicago and Alton Railroad Company; Robert Dunlap, general attorney Atchison, Topeka and Santa Fe Railroad Company; Chester M. Dawes, solicitor Chicago, Burlington and Quincy Railroad Company; Robert Mather, general attorney Chicago, Rock Island and Pacific Railroad Company, and Lloyd W. Bowers, general counsel Chicago and Northwestern Railroad Company.

You ask for a definite ruling in reference to the stamping of bills of lading by carriers when stamped shipping receipts have been previously issued for the same shipment, and also concerning the necessity of stamping dray tickets or receipts given by carriers at the time of the delivery of the goods in a merely preliminary form.

Your questions are as follows:

(1) When a writing, signed by a railroad company and acknowledging the receipt of property for transportation by it between specified places, has been issued by the railroad company to the shipper and has been stamped with a 1-cent United States revenue stamp, must a bill of lading which may be subsequently issued for the same shipment have another 1-cent United States revenue stamp affixed and canceled, or will it suffice for the bill of lading to bear some indorsement indicating that a regular shipping receipt had previously been issued and stamped for the same shipment?

(2) If at the time of delivery of goods to a railroad company for transportation the company issues a dray ticket or receipt to the ship-

per, which is not intended to be the shipping contract, but is merely evidence of the shipper's delivery of the goods to the carrier, and of his right in consequence of such delivery to receive from the carrier at another office a regular shipping contract or bill of lading, and if this preliminary paper bears such an indorsement as the following, viz: "This is a memorandum only and not negotiable, and must be exchanged at the general office in Chicago for a bill of lading, to which the agent of this company will attach a revenue stamp, as required by law," must such preliminary dray ticket or receipt be stamped with a 1-cent United States revenue stamp?

These questions embody substantially the same proposition, although the second is more explicit than the first, and this office rules thereon as follows:

The law provides that it shall be the duty of every carrier "to issue to the shipper or consignor, or his agent, or person from whom any goods are accepted for transportation, a bill of lading, manifest, or other evidence of receipt and forwarding for each shipment received for carriage and transportation, whether in bulk or in boxes, bales, packages, bundles, or not so inclosed or included; and there shall be duly attached and canceled, as in the Act provided, to each of said bills of lading, manifests, or other memorandum, and to each duplicate thereof, a stamp of the value of one cent."

It is evident from these provisions that a technical bill of lading is not required to be issued when goods are received for carriage and transportation. Any written evidence of receipt and forwarding, such as a memorandum receipt or dray ticket, will answer the requirements of the law, and this evidence must be stamped when issued. If, however, such memorandum receipt is afterwards exchanged at the general office of the company for a more elaborate shipping contract or bill of lading, the bill of lading so issued in lieu of the preliminary memorandum receipt (or dray ticket, as it is sometimes called) will require no stamp if the following indorsement appears thereon:

"This bill of lading is issued in lieu of a duly stamped memorandum receipt for the same shipment of goods now on file in the company's office."

And there is no objection to the memorandum receipt bearing an indorsement that it will be exchanged on presentation at the company's office for a full bill of lading. The stamped memorandum receipt, when so exchanged, must always be retained by the company as evidence that the law has been complied with.

No duplicate of either the memorandum receipt or the bill of lading issued in lieu thereof can be issued by the company to the shipper without being stamped, as the law expressly taxes each duplicate.

All rulings heretofore made inconsistent with the above are hereby revoked.

Respectfully, yours,

G. W. WILSON, *Commissioner.*

Mr. JAMES FENTRESS,

General Solicitor, Illinois Central Railroad Company, Chicago, Ill.

(21692.)

Stamp tax—Express receipts.

Concerning the business of local expressmen and common carriers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 24, 1899.

SIR: This office is in receipt of your letters under date of October 18 and 19, relative to the question of receipts issued by local expressmen.

In your first letter you state that Messrs. Monroe & Arnold receive goods at Peabody for destination in Boston and points beyond, for which they issue no receipt to the shipper. The shippers, however, give them with each shipment a receipt to be signed by the party to whom the package is addressed, if the destination is only Boston, which the expressman say they take to their office in Peabody, where they affix and cancel a stamp, and then forward the receipt with the package to Boston, where it is signed when the package is received by the one to whom it is addressed, and it is then taken by the expressmen to their office and placed on file, where it remains.

You ask to be informed if the above method is correct.

Your attention is called to the following paragraph of Schedule A:

Express and Freight: It shall be the duty of every railroad or steamship company, carrier, express company, or corporation or person whose occupation is to act as such, to issue to the shipper or consignor, or his agent, or person from whom any goods are accepted for transportation, a bill of lading, manifest, or other evidence of receipt and forwarding for each shipment received for carriage and transportation, whether in bulk or in boxes, bales, packages, bundles, or not so inclosed or included; and there shall be duly attached and cancelled, as in this Act provided, to each of said bills of lading, manifests, or other memorandum, and to each duplicate thereof, a stamp of the value of one cent.

You are advised that under the above paragraph the law specifically states that it is the duty of a common carrier to issue to the shipper or the consignor a receipt, bill of lading, or other evidence of receipt and forwarding for each shipment, and to said receipt or bill of lading, or other evidence of receipt and forwarding, and to each duplicate thereof, there must be affixed a 1-cent stamp. Therefore, the practice followed by Messrs. Monroe & Arnold above described is contrary to law, and you will so advise these gentlemen. They must issue to the consignor for each package received in Peabody, Mass., for destination at Boston, or elsewhere, a receipt, and to such receipt they must attach a 1-cent stamp.

In your letter of October 19 you state that local expressmen who take packages in towns and cities outside of Boston for distant points, deliver them to railroad, steamship, and express companies for transportation to their destination. The railroad and steamship companies

decline to recognize these local expressmen as common carriers, and, on issuing to them a receipt for the transfer and forwarding, issue a stamped receipt, but the large express companies issue for all such an unstamped receipt, treating it as a transfer. This, you say, leads to confusion, and makes it uncertain to local expressmen as to what is required of them, resulting in some cases in a double stamping, and in many cases the issuing of receipts by local expressmen to which no stamp is affixed, and you ask to be advised in the matter.

You are advised that where a local expressman receives a package, its destination being a point outside of the limits of the city in which said local expressman has his office, the local expressman must issue a receipt, and to said receipt must affix a 1-cent stamp. If said receipt is sufficient to carry the package to the final point of destination, although it may require several intermediate lines to complete the shipment, but one stamp is required. If, however, said receipt is only sufficient to carry the package to, say, Boston, where it is delivered to a railroad, steamship, or express company, said railroad, steamship, or express company must give a receipt covering the transportation of the package to its final destination, and to said receipt they must affix a 1-cent stamp.

If a local expressman accepts a package for delivery to a railroad, steamship, or other express company within the limits of the city in which said local expressman has his office, no receipt is required to be issued by said local expressman, but the railroad, steamship, or express company receiving the package from the local expressman must issue a receipt or bill of lading and affix a 1-cent stamp thereto.

Respectfully, yours, G. W. WILSON, *Commissioner*.

Mr. JAMES D. GILL, *Collector Internal Revenue, Boston, Mass.*

(6.)

Stamp tax—Export bills of lading.

Opinion of the Attorney-General on the question of the taxability of export bills of lading, or receipts, issued for goods shipped from the United States to Canada or Mexico by rail.—Such instruments taxable at the rate of 1 cent instead of 10 cents, as heretofore.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 5, 1900.

SIR: Inclosed I transmit for your information and guidance an opinion of the United States Attorney-General in regard to the taxability of export bills of lading or receipts issued by carriers covering goods exported from the United States to Canada or Mexico by railroad cars, under Schedule A, act of June 13, 1898.

It will be seen that the Attorney-General is of the opinion that such export bills of lading or receipts, issued for goods shipped by rail from

the United States to Canada or Mexico, require a 1-cent stamp and not a 10-cent stamp, as heretofore required by this office. All former rulings of this office on this subject are hereby modified to conform to said opinion. * * *

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. C. H. TREAT, *Collector Internal Revenue, New York, N. Y.*

DEPARTMENT OF JUSTICE,
Washington, D. C., January 2, 1900.

SIR: I have the honor to acknowledge the receipt of your communication of December 19, 1899, submitting for my opinion the following questions:

"(1) As to whether export bills of lading issued by carriers covering goods exported from the United States to Canada by railroad cars are taxable under Schedule A, act of June 13, 1898, at the rate of 10 cents for each shipment or at the rate of 1 cent.

"(2) Whether the same ruling applicable to Canadian exports by railroad would also apply to exports by railroad from the United States to Mexico, another contiguous foreign territory."

The answer to these interrogatories depends upon the determination as to which of two clauses of the war-revenue act of 1898 governs the taxation of bills of lading for goods exported by railroads from places within the United States to Canada or Mexico. The two clauses referred to are the following:

A. "Bills of lading or receipt (other than charter party) for any goods, merchandise, or effects, to be exported from a port or place in the United States to any foreign port or place, ten cents."

B. "*Express and Freight*: It shall be the duty of every railroad or steamboat company, carrier, express company, or corporation or person whose occupation is to act as such, to issue to the shipper or consignor or his agent, or person from whom any goods are accepted for transportation, a bill of lading, manifest, or other evidence of receipt and forwarding for each shipment received for carriage and transportation, whether in bulk or in boxes, bales, packages, bundles, or not so inclosed or included; and there shall be duly attached and cancelled, as is in this Act provided, to each of said bills of lading, manifests, or other memorandum, and to each duplicate thereof, a stamp of the value of one cent:" etc., etc.

Upon a broad and general interpretation of the language of these provisions, the ordinary freight receipts or bills of lading issued by railroad companies evidencing the receipt of goods to be transported from the United States to any place in Canada or Mexico would be taxable under either clause. Because such manifests or receipts as are referred to and as are usually issued by railroad companies upon the receipt of freight for transportation are within the broader meaning of the term bills of lading, and, therefore, would be taxable under Clause A, they are also undoubtedly within the class of instruments included within Clause B. There being, therefore, a necessity of determining by legal construction which clause of the war-revenue act is intended to cover this particular kind of instruments, we must resort to the ordinary rules of interpretation and seek to discover otherwise than by a resort to the broadest and most general meaning of the words the particular clause of the act which the will of Congress intended should apply.

Resorting, therefore, to other parts of the same act, we find the following provisions, which may be cited as tending to shed some light upon the question:

C. "*Charter Party*: Contract or agreement for the charter of any ship, or vessel, or steamer, or any letter, memorandum, or other writing between the captain, master, or owner, or person acting as agent of any ship, or vessel, or steamer, and any other person or persons, for or relating to the charter of such ship, or vessel, or steamer, or any renewal or transfer thereof, if the registered tonnage of such ship, or vessel, or steamer does not exceed three hundred tons, three dollars," etc.

D. "Manifest for custom-house entry or clearance of the cargo of any ship, vessel, or steamer for a foreign port—if the registered tonnage of such ship, vessel, or steamer does not exceed," etc.

E. "Passage ticket by any vessel from a port in the United States to a foreign port, if costing not exceeding thirty dollars, one dollar," etc.

F. "*Provided*, That the stamp duties imposed by the foregoing schedule on manifests, bills of lading, and passage tickets shall not apply to steamboats or other vessels plying between ports of the United States and ports in British North America."

The phrase "bills of lading" and the words "port," "export," etc., are derived from the maritime law, and originally related exclusively to matters connected with navigation and shipping. A bill of lading, in maritime jurisprudence, signifies a memorandum or acknowledgment in writing, signed by the captain or master of a ship or other vessel, that he has received in good order on board of his ship or vessel therein named at the place therein mentioned certain goods therein specified, which he promises to deliver in good order, the dangers of the sea excepted, at the place therein appointed, for the delivery of the same to the consignee named therein, or to his assigns, he or they paying freight for the same. This was the primary meaning of the term. A charter party was a contract for the letting of the whole or part of a ship for the conveyance of goods in consideration of the payment of freight. So, also, in its earliest use the word "export" meant the carrying out of goods from one country into a foreign country by means of a ship. Modern methods of business and transportation have made the use of receipts or manifests in the nature of bills of lading applicable to transportation by carriers by land, and such receipts or manifests are now frequently described as bills of lading. In the same way goods are now frequently exported by railroad cars as well as by vessels.

It is obvious that when the act in question refers to the subject of charter parties and fixes the tax thereon, as well as when it refers to manifests for custom-house entry or clearance of the cargo of any ship, vessel, or steamer for a foreign port, or to passage tickets by any vessel from a port in the United States to a foreign port, it is referring exclusively to matters within the realm of maritime law, and is dealing only with vessels engaged in the foreign trade. In my judgment, it was in the same sense that Clause A, referring to bills of lading for goods to be exported from a port or place in the United States to any foreign port or place, was intended to be considered. This conclusion is derived from several considerations:

1. Clause B, under the title of "Express and freight," has fully and specifically covered the taxation of manifests or receipts issued for goods received for transportation by railroad companies. There can be no question but what in every case of a shipment by rail from any

point in the United States either to another point in the United States or to a point out of the United States, the company is bound to issue a receipt under the express and freight clause, and to place thereon a 1-cent stamp. In all instances where goods are received for transportation by rail in the United States, some part of the carriage must be through our own territory, and certainly for that portion of the carriage a stamp receipt is necessary under Clause B. It would also seem to be necessary to hold, if Clause A is applicable to such cases, that an additional stamp of 10 cents must be placed upon the receipt or manifest in case the goods are to be transported to a place outside the United States; but unless the language of the act positively requires it, it will not be held that Congress intended to impose duplicate taxation upon this branch of business. A meaning will be sought for that will give reasonable and adequate effect to each clause, so that each can have full and complete operation within its own sphere of application. Such a result we obtain from a construction which restricts Clause A to a maritime sense as referring only to transportation by vessels in the foreign trade, exclusive of all ports of British North America.

2. The war-revenue acts of 1862 and 1864 contained a clause in precisely the same language as Clause A under consideration; nevertheless, the Treasury Department never attempted by virtue of that provision to impose a stamp tax upon railroad companies transporting goods to Canada by rail during the whole period those acts remained in force. This was not because the Department was not desirous of imposing, if possible, a revenue tax upon railroad freight receipts, for it appears that several attempts were made by the Internal-Revenue Office to subject such receipts to taxation under other clauses of the acts of 1862 and 1864, though unsuccessfully. The fact that during the whole time that this clause remained unrepealed as a part of the acts of 1862 and 1864, a construction was put upon it by the revenue bureau, which limited its application to goods exported by vessels engaged in the foreign trade, is very cogent and conclusive testimony as to the scope and effect the same clause was intended to have by the Congress which passed the war-revenue act of 1898.

What is known as Departmental construction of a statute is, in proper instances, a very important method of determining the true legal construction to be placed upon acts of Congress. As was said by Mr. Justice Brown in *Schell's Executors v. Fauche* (138 U. S., 562-572): "In all cases of ambiguity the contemporaneous construction, not only of the courts, but of the departments, and even of the officers whose duties it is to carry the laws into effect, is universally held to be controlling."

When there is added to this Departmental construction the subsequent re adoption of the same language by Congress in another act, it is conclusive that Congress, in the absence of language to the contrary, intended the same construction and effect to be given to the words in the latter as in the former instance.

In this connection it is to be noted that the Proviso F, exempting from stamp duties manifests, bills of lading, and passage tickets issued by steamboats and other vessels plying between ports of the United States and ports in British North America, was also contained in the act of 1862. It thus appears that Congress, in both instances, had in view the policy of exempting from taxation bills of lading on vessels engaged in the foreign trade with ports of British North America, leaving the duties to be paid upon business of that nature transacted by vessels going to other foreign ports.

3. To hold that Clause A covered bills of lading or manifests issued by railroad companies for goods received by them for transportation by rail from points in the United States to Canada would be to hold in effect that Congress intended to make a manifestly unjust discrimination against that particular class of traffic. This will appear from a comparison of freight rates by railroad to Canada and by vessels to Liverpool. The minimum rate for merchandise weighing less than 100 pounds from Boston to Montreal is 45 cents. A stamp tax of 10 cents upon such shipment would equal 22 per cent of the gross freight, but inasmuch as the American railroads, which would have to pay this tax, receive only a portion of the total freight charge, the percentage of tax to the freight received by the American road would be much greater.

The minimum rate of freight for merchandise from Boston to Liverpool on similar quantities is 21 shillings; the tax of 10 cents on such a shipment would amount to only 2 per cent of the total freight, but by the proviso of the act all shipments by vessel to Canadian ports are required to pay no stamp tax whatever. It is not probable that it was the intention of Congress to make so serious a discrimination against the railroad carriers. No reason for such a discrimination is suggested or in any way appears, and in the absence of explicit language requiring such a construction it will not be presumed that Congress intended so to discriminate.

I therefore advise you that upon bills of lading, receipts, manifests, and other similar documents issued by railroad companies for the receipt of goods to be transported by rail from any place in the United States to Canada, a stamp tax of 1 cent is payable under the clause headed "Express and freight," and that no tax is payable thereon under the clause relating to goods exported from a port or place in the United States to any foreign port or place. The same rule should be applied to shipments by rail to Mexico.

Very respectfully, JOHN W. GRIGGS, *Attorney-General*.

The SECRETARY OF THE TREASURY.

BOARDS OF TRADE, EXCHANGES, ETC., SALES AT.

(See EXCHANGES, BOARDS OF TRADE, ETC.)

BONDS.

(See also DECISIONS 20781, p. 138; 20795, p. 200; 20917, p. 203; 20981, p. 204; 21400, p. 205; 21420, p. 226; 21471, p. 209; 21539, p. 318; 21667, p. 211; 21815, p. 86.)

(20510.)

Stamp tax—Bonds of State officers.

Tax on bonds required before a person can enter on the duties of a State office not a tax on the functions of a State government.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 10, 1899.

SIR: I have the honor to acknowledge the receipt of your letter of December 19, 1898, to the Hon. John W. Griggs, United States Attorney-General, which has been referred to this office for answer.

Your letter is devoted to an argument intending to show that the taxation by the United States of the bonds of State officers is unconstitutional.

In reply, you are advised that the ruling of this office, made on the advice of the honorable Attorney-General, is that "bonds given by public officers, such as sheriffs, clerks, registers, or recorders of deeds, treasurers of counties, cities, or towns, or other public officers of like character, are required to be stamped." This ruling was made under the authority of that paragraph of Schedule A of the act of June 13, 1898, which is headed:

Bond: For indemnifying any person or persons, firm, or corporation who shall have become bound or engaged as surety for the payment of any sum of money, or for the due execution or performance of the duties of any office or position, and to account for money received by virtue thereof, and all other bonds of any description, except such as may be required in legal proceedings, not otherwise provided for in this schedule, fifty cents.

It is not claimed that the bonds of State officers come under the indemnifying clause of the above paragraph, but are included in the phrase "all bonds of any description, except such as may be required in legal proceedings not otherwise provided for in this schedule."

The only portion of the law which would exclude or exempt these bonds from taxation is contained in the first proviso of section 17 of the stamp act, which states:

That it is the intent hereby to exempt from the stamp taxes imposed by this Act such State, county, town, or other municipal corporation, in the exercise only of functions strictly belonging to them in their ordinary governmental, taxing, or municipal capacity.

Of course, it could not be maintained that bonds required from persons before they can be qualified as State officers come within this exception.

In your argument you cite the only decision of a court which has ever ruled that the official bonds of State officers are not taxable by the United States Government. This was given by the supreme court of Indiana in the case of the State *v.* Gordon (32 Ind., 1).

This opinion of a single State court can have no controlling influence over the Executive Department of the United States Government. This office is aware that the United States Supreme Court has decided that the United States can not tax the salaries of State officers, but it has never decided that it can not tax their bonds.

The same tax was in force from July 1, 1862, to June 6, 1872, and so far as known to this office this question was never tested in any Federal tribunal. In the face of a plain, unequivocal legislative mandate, the Executive Department of the Government would not be justified in changing the ruling above stated in regard to these bonds

without an express decision upon the subject by the Supreme Court of the United States.

This office declines to enter upon the constitutional argument so ably set forth in your letter. It entertains the opinion, however, that the tax upon a bond given by a citizen of a State before he enters upon the duties of a State office can not be considered as a tax upon the functions of a State government. The citizens of a State are also citizens of the United States, and owe a paramount allegiance to the latter.

The collectors of internal revenue of the State of Texas will be instructed to collect this tax in case of the failure to stamp the bonds of State officers, by assessment and distraint, if necessary, and if any person wishes to contest the same in the courts he can do so after payment of the tax and application for refunding has been made in the way pointed out in the statutes.

Respectfully, yours, G. W. WILSON, *Acting Commissioner*.
Hon. M. M. CRANE, *Attorney-General of Texas, Austin, Tex.*

(20547.)

Stamp tax—Bonds of notaries public.

Bonds of notaries public are subject to a tax of 50 cents each.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 13, 1899.

SIR: I have the honor to acknowledge the receipt, by your hands, of a letter from Hon. Asa S. Bushnell, governor of Ohio, under date of January 11, 1899. In this letter the governor submits the question of the taxability under the war-revenue act of the bonds given by notaries public of the State of Ohio for the faithful performance of duty. The governor requests that the opinion of this office be rendered to you.

In reply, you are advised that the ruling of this office has uniformly been that the bonds of all Federal, State, county, and municipal officers require a 50-cent stamp. Notaries public are, of course, State officers, being appointed by the governor.

See Treasury decision 20510 (page 33), a ruling recently rendered on this subject in reply to a constitutional argument against the validity of this tax, submitted by the honorable attorney-general for the State of Texas.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner*.
Col. W. O. TOLFORD, *Washington, D. C.*

(20756.)

Stamp tax—Bonds, etc.

Bonds required in legal proceedings.—Bonds of administrators, executors, guardians, and receivers appointed by the courts not taxable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 1, 1899.

SIR: This office has to acknowledge the receipt of your letter submitting reports of your examinations of the records of the county clerks' offices at Princeton and Hartford, Ky.

It is noticed that you report unstamped bonds given by executors, administrators, and guardians as liable to taxation.

You are advised that this is no longer the ruling of this office, and that, although it was so published in the earlier circulars issued, the ruling now is that bonds given by executors, administrators, guardians, and receivers appointed by the courts are bonds required in legal proceedings, and are not taxable under Schedule A of the war-revenue act.

The original ruling was based upon the legal definition that bonds required in legal proceedings are attachment bonds, injunction bonds, appeal bonds, etc., and are practically a part of the record of a suit or proceeding in court. Bonds of executors, administrators, and guardians are bonds of persons acting under judicial control (*Encyclopedia of Law*, vol. 2, p. 466). But, owing to an opinion of Assistant Attorney-General Boyd (see Commissioner's Report, 1898, p. 113), the ruling has been changed; and in a recent circular, No. 503, revised, the previous ruling has been omitted.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Mr. D. A. GATES, *Revenue Agent, Louisville, Ky.*

(20788.)

Stamp tax—Bonds.

Opinion of the honorable Attorney-General that bonds given by private individuals secured by mortgages are taxable as bonds of any description not otherwise provided for, and not as promissory notes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 2, 1899.

SIR: Referring to your letters in reference to the bonds used by the Title, Guarantee and Trust Company, of your city, in connection with mortgages, I inclose herewith an opinion of the Attorney-General relative to this question, in which he explains the former advisory

opinion of Assistant Attorney-General Boyd, to be found on page 100 of the Commissioner's Report of 1898.

It will be seen that the Attorney-General decides that such bonds are taxable like ordinary bonds and not as promissory notes. You will, therefore, hereafter consider such bonds given by persons other than an association, company, or corporation as included in the category of bonds of any description not otherwise provided for, and taxable at the rate of 50 cents each.

Respectfully, yours,

G. W. WILSON, *Commissioner*.

Mr. FRANK R. MOORE,

Collector Internal Revenue, Brooklyn, N. Y.

DEPARTMENT OF JUSTICE,
Washington, D. C., February 25, 1899.

The SECRETARY OF THE TREASURY.

SIR: I have the honor to acknowledge the receipt of yours of the 20th instant, which is referred to me by the Attorney-General, with the request that I draft an answer.

You ask the Attorney-General if he indorses an advisory opinion which I rendered to the Commissioner of Internal Revenue some time ago relative to the stamp required upon bonds and promissory notes under the provisions of the war-revenue act.

Before coming to the main question, I think it is proper that I should state the circumstances under which the advisory opinion referred to was rendered. I was responding to a request from the Commissioner for an opinion as to whether both a promissory note secured by mortgage and the mortgage itself were severally subject to stamp duty. After answering this inquiry in the affirmative, I said, in substance:

In this connection it should be held that a paper given for the payment of money lent at the time, or previously due or owing, in the ordinary business transactions, where the same is attested with the seal of the maker, should be treated as a promissory note, although technically it may come under the head of a bond by reason of the fact that it has the word "seal" written after the name of the signer. In some of the States it is the usual form, in cases where mortgages are executed to secure the payment of money, for the mortgagor to give also what is called a "bond," but which is nothing more nor less than a promise to pay money borrowed or otherwise owing.

I did not intend by this opinion to induce a ruling by the Commissioner involving the well-defined legal distinctions between a bond and a promissory note. I had in mind the fact that the tax in many instances upon a promissory note is greater than that upon a bond and it occurred to me that the makers of promissory notes would realize this fact and, by the addition of a seal to a paper which was otherwise only a promissory note, transform it technically into a bond, and thus evade the tax; and it was my purpose to have the Commissioner make a ruling in advance which would have the effect to prevent such effort at evasion, and thereby save taxes to the Government.

Having said this much in explanation of the opinion above cited, which was given hurriedly and under the circumstances stated, and which was not intended to, and could not, have the effect of a legal

opinion rendered by the Attorney-General, I will now proceed to consider the subject presented by your letter.

The trouble about this matter appears to have arisen because of the fact that the Commissioner of Internal Revenue made a ruling in which he did not confine my opinion to the tax upon papers which were in form promissory notes, with a seal attached after the name of the maker, as before stated, but applied it to all bonds accompanying real-estate mortgages given by private individuals. It is possible that in the short opinion which I gave the Commissioner I did not express myself as fully as I should have done, and confusion about this question has consequently been brought about.

I do not deem it necessary to have the Attorney-General answer categorically whether he indorses what I have said to the Commissioner of Internal Revenue or not, for, as I said above, I had in mind one thing and the Commissioner seems to have understood the scope of the opinion which I gave to include another. Now that the question is presented squarely, and I am called upon to construct an opinion in response to the request of the head of an Executive Department, I feel constrained to hold that, in the administration of the provisions of the war-revenue act pertaining to duties to be paid by stamps, the classification of instruments requiring stamps, as described in the law itself, must be maintained, and the liability of the instrument to the stamp duty, as well as the amount of such duty, must be determined by the form and face of the instrument itself.

The Supreme Court of the United States, in *United States v. Isham* (17 Wall., 496, 503), laid down the following rules relative to the stamping of instruments under the internal-revenue law:

"First. Instruments described in technical language, or in terms especially descriptive of their own character, are classed under that head, and are not to be included in the general words of the statute.

"Second. The words of the statute are to be taken in the sense in which they will be understood by that public in which they are to take effect. Science and skill are not required in their interpretation, except where scientific or technical terms are used.

"Third. The liability of an instrument to a stamp duty, as well as the amount of such duty, is determined by the form and face of the instrument, and can not be affected by proof of facts outside of the instrument itself.

"Fourth. If there is a doubt as to the liability of an instrument to taxation, the construction is in favor of the exemption, because, in the language of Pollock, C. B., in *Girr v. Scudds*, 'a tax can not be imposed without clear and express words for that purpose.'"

And the court says in this case, that "these principles are based in good sense and are sustained by the authorities."

Adopting the principles declared in this decision, it is only necessary to observe the legal distinction between a bond and a promissory note in order to arrive at the manner of taxing each. A bond, say the law writers, is an obligation in writing and under seal, binding the obligor to pay a sum of money to the obligee. It is sometimes denominated a specialty, being under seal, as distinguished from a simple promise not sealed. By the common law a seal is of the essence of a bond, and no writing can have the qualities which attach to a bond without the seal of the party executing it. A promissory note is an unconditional promise to pay to another's order, or to bearer, a stated sum of money at a specified or implied time. The person who

executes a note is called the maker and he to whom it is made payable is called the payee.

Thus the distinction between the two instruments is well defined and easily discernible.

Very respectfully,

JAS. E. BOYD,
Assistant Attorney-General.

Approved:

JOHN W. GRIGGS, *Attorney-General.*

(20796.)

Stamp tax—Bond secured by mortgage.

Bond of private person secured by mortgage considered in relation to opinion of the Attorney-General and amendment to Schedule A approved February 28, 1899.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 7, 1899.

SIR: This office is in receipt of a letter bearing date of February 8, 1899, from A. M. Sanders, attorney at law, 206 Broadway, New York City, in which this gentleman states that he saw in a recent issue of a Brooklyn, N. Y., paper the statement that an internal revenue collector had notified the Title Guarantee and Trust Company, of Brooklyn, that a bond given with a real estate mortgage must have affixed thereto a 50-cent stamp, and, in addition, 2 cents per \$100 of the amount of the bond. And that in decision No. 125, Circular No. 503, revised, it is stated that a bond secured by a mortgage given by a private person in lieu of a promissory note is taxable as a promissory note, and not as a bond, and he asks for an explanation of these inconsistent rulings.

In reply, you will please inform him that ruling No. 125 in Circular 503, revised, was the ruling of this office until the Attorney-General advised this office that a bond secured by a mortgage, said bond and mortgage being executed by a private person, was subject to a tax of 50 cents. Since the rendering of the Attorney-General's opinion, the Congress of the United States has passed the following amendment to Schedule A, which must be taken into consideration in connection with the ruling of the Attorney-General. This amendment was approved by the President on February 28, 1899, and is as follows:

Whenever any bond or note shall be secured by a mortgage or deed of trust, but one stamp shall be required to be placed upon such papers: *Provided*, That the stamp tax placed thereon shall be the highest rate required for said instruments, or either of them.

You will, therefore, see that when a bond is executed by a private person, and it is secured by a mortgage, that the tax is 50 cents on the bond. You will also see according to the tax on mortgages that there is no tax accruing on a mortgage if the sum secured does not exceed

\$1,000. The tax on a mortgage securing a sum exceeding \$1,000 and not exceeding \$1,500 is 25 cents. Therefore, in any case where a mortgage and bond is given by a private person for a sum not exceeding \$1,500, the greater tax would accrue on the bond, and under the above amendment the bond should be stamped. After the secured sum of \$1,500 is exceeded and the excess is not greater than \$2,000, the taxation on the bond and on the mortgage is equal, being 50 cents on each instrument. Whenever the tax is equal, it is the ruling of this office that the mortgage should be stamped and not the bond.

This office also informs you that the instrument which is relieved from taxation under this amendment should have indorsed upon it that the other instrument is duly stamped according to law. This is a requirement for the benefit of all parties concerned and it should be made as *prima facie* evidence that the requirements of the law have been complied with.

Respectfully, yours, G. W. WILSON, *Commissioner*.
MR. CHAS. H. TREAT,
Collector Second District, New York, N. Y.

(20876.)

Stamp tax—Bonds.

Bonds given under section 3297, Revised Statutes, by officers of State institutions, for alcohol to be used for scientific purposes, not subject to stamp tax under the act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 16, 1899.

SIR: Your letter of the 14th instant, inclosing the bond, Form 432, executed by Hosea M. Quimby, president, *et al.*, for the purpose of obtaining alcohol from bond, free of internal-revenue tax under the provisions of section 3297, Revised Statutes, for use in the Worcester Insane Hospital, which bond was returned to you in order that a revenue stamp of 50 cents, under the act of June 13, 1898, might be affixed thereto, has been received.

You state that "because of the fact that it is a State institution and the expense of the stamp, if attached, would come out of the State treasury, we class it among instruments which are not required to be stamped," and you ask for my decision thereon.

In reply, you are informed that, upon the facts stated, this office is of the opinion that the bond in question is exempt from the stamp tax under the provisions of section 17 of the act named.

Respectfully, yours, G. W. WILSON, *Commissioner*.
MR. JAMES D. GILL, *Collector Third District, Boston, Mass.*

(21312.)

Stamp tax—Bonds of distillers, brewers, etc.

Stamps required on bonds of distillers, brewers, and other manufacturers.—When given in duplicate or triplicate, only the original to be stamped.—Modification of Treasury ruling No. 19707, of July 18, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 21, 1899.

SIR: This office has received a letter from Mr. James H. Borland, San Francisco, Cal., calling attention to the fact that in case of a transportation and warehousing bond, Form 236, executed in triplicate, this office requires that the original, duplicate, and triplicate should be stamped with a 50-cent stamp, which seems to be in conflict with the published opinion of Assistant Attorney-General Boyd.

You will please advise Mr. Borland that this matter has been carefully reconsidered in view of said opinion, and Treasury decision 19707,¹ of July 18, 1898, is hereby modified as follows:

Bonds of brewers, manufacturers of tobacco, manufacturers of cigars, distillers' annual, distillers' warehousing, transportation and export bonds, are required to be stamped under the provisions of the act of June 13, 1898, with a 50-cent stamp, and when a guaranty company is surety an additional stamp is required denoting one-half of 1 per cent on the premium charged.

Where these bonds are required by law or regulation of this office to be made in duplicate or triplicate, only the original is required to be stamped.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Mr. JOHN C. LYNCH,
Collector Internal Revenue, San Francisco, Cal.

(21609.)

Stamp tax—Proposal guaranties.

Guaranties accompanying proposals taxable the same as bonds.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 18, 1899.

SIR: I have the honor to acknowledge the receipt of your letter of August 12, 1899, relative to the taxability of guaranties accompanying proposals in receiving bids in the War Department.

¹Compilation of Decisions Rendered by the Commissioner of Internal Revenue under the War-Revenue Act of June 13, 1898 (January, 1899), page 50.

You state that under date of August 18, 1898, this office in a letter to you ruled, among other things, that "there does not appear to be anything about the guaranty to proposal blank, which you inclose, that requires a stamp."

On the 20th of June, 1899, this office ruled, in a letter to Maj. James L. Lusk, of the Office of the Chief of Engineers, that a blank submitted by him, entitled "Guaranty to accompany proposal," was "in meaning and effect a bond, and taxable as such at the rate of 50 cents, and an additional tax of one-half of one per cent on premium charged if a fidelity, guaranty, or surety company becomes guarantor or surety on such instrument."

You say that the slight difference between these forms of guaranty would not appear to affect the question of taxation, and you ask whether the ruling of June 20, 1899, is intended to be a reversal of the ruling of August 18, 1898.

The instrument submitted by the Office of Chief of Engineers was in the following form:

GUARANTY TO ACCOMPANY PROPOSAL.

We, ———, of ———, in the county of ——— and State of ———, and ———, of ———, in the county of ——— and State of ———, hereby undertake that if the bid of ———, herewith accompanying, dated ———, 1899, for repairing Government piers at Ludington, Mich., be accepted as to any or all of the items of supplies, materials, and services proposed to be furnished thereby, or as to any portion of the same, within sixty days from the date of the opening of proposals therefor, the said bidder, ———, will, within ten days after notice of such acceptance, enter into a contract with the proper officer of the United States to furnish such articles of supplies and materials and such services of those proposed to be furnished by said bid as shall be accepted, at the prices offered by said bid and in accordance with the terms and conditions of the advertisement inviting said proposals, and will give bond with good and sufficient sureties for the faithful and proper fulfillment of such contract. And we bind ourselves, our heirs, executors, and administrators, jointly and severally, to pay to the United States, in case the said bidder shall fail to enter into such contract or give such bond within ten days after said notice of acceptance, the difference in money between the amount of the bid of said bidder on the articles or services so accepted and the amount for which the proper officer of the United States may contract with another party to furnish said articles and services, if the latter amount be in excess of the former.

Given under our hands and seals this ——— day of ———, eighteen hundred and ninety-nine.

In the presence of—

———— as to ———¹.
 ——— as to ———¹.

After a careful reconsideration of this question, this office is still of the opinion that the above instrument is on its face and in meaning and effect a bond, being an obligation under seal whereby certain

¹ Affix adhesive seal.

parties called guarantors bind themselves to indemnify the United States in case a bidder fails to perform certain required acts.

You are, therefore, advised that the ruling of August 18, 1898, above specified, was reversed by the ruling of June 20, 1899, and any other ruling inconsistent therewith is hereby modified to conform thereto.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Brig. Gen. M. I. LUDINGTON,
Quartermaster-General, U. S. A., Washington, D. C.

(21666.)

Stamp tax—Fidelity and guaranty companies.

Where fidelity or guaranty companies become sureties on bonds, tax is due and payable whenever the premiums are paid.—Method of paying tax.—Tax on renewal of bonds.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 14, 1899.

SIR: I have to acknowledge receipt of your letter of the 21st ultimo, in which you call attention to the fact that the agents of fidelity and guaranty companies in your district are not paying taxes on annual premiums paid; except taxes paid on the original documents.

You say that one agent thinks that where no new policy is issued, and subsequent yearly premiums are paid on a continuous bond or schedule bond, no tax is due. This opinion of the insurance agent is entirely erroneous, and indicates a serious violation of law on the part of the insurance companies. *All premiums charged for becoming surety on bonds are taxable whether paid annually or otherwise, and a tax accrues whenever such premium is charged or paid.*

You are instructed in regard to the manner of paying tax on such premiums that this office has heretofore ruled that when a premium is paid subsequent to the one on the first issue of a continuing bond, a receipt must be issued by the guaranty company, on which a stamp must be affixed covering the amount of tax due on the premium so charged, and such stamped receipt must be affixed to or filed with the original bond.

If the bond is a continuous one, it requires no additional stamp tax as a bond when the premium is again paid. If the bond is limited by its term to one year, or other period, and it is renewed on expiration of the period either by the issue of a new bond or by a renewal agreement attached to or filed with the old bond a stamp tax of 50 cents as a bond accrues on each renewal in addition to the stamp tax on the premiums.

The principal in a bond is the party issuing the same, whether originally or on renewal, and he is liable to the penalties prescribed in section 7, act of June 13, 1898, for omission to stamp.

You will please communicate this ruling to the parties interested, and you will require any insurance company, or its agent, in your district which has failed to pay the stamp tax in accordance therewith to make a sworn return of such deficiency for the purpose of assessment.

Respectfully, yours,

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

Mr. THOMAS A. LAKE, *Collector Internal Revenue, Hartford, Conn.*

BOWLING ALLEYS.

(21495.)

Special tax—Bowling alley.

Where a person who has taken out a special-tax stamp for a bowling alley closes this alley and thereafter opens another to the public, the stamp may be transferred to the latter bowling alley under the provisions of section 3241, Revised Statutes, if it remains in his ownership and control.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 11, 1899.

SIR: Your letter of the 7th instant has been received, inquiring whether a special-tax stamp which has been issued for a bowling alley that was open to the public during the months of July and August "but closed for the remainder of the special-tax year" can be transferred "to another bowling alley which has not been open to the public during the months of July and August, but is opened on the 1st day of September."

You are hereby advised that if the bowling alley which is to be opened on the 1st day of September is in the ownership and control of the same person who took out a special-tax stamp for the bowling alley to which you refer as closed to the public prior to that date the special-tax stamp can be transferred under the provisions of the last paragraph of section 3241, Revised Statutes.

Respectfully, yours,

G. W. WILSON, *Commissioner.*

Mr. JAMES A. WOOD,

Collector Internal Revenue, Portsmouth, N. H.

(21606.)

Special tax—Bowling alley.

In every building or place where bowls are thrown, each division or track is a separate alley, for which the special tax of \$5 must be paid.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 14, 1899.

SIR: Your letter of the 16th ultimo has been received, submitting the question whether, "where two tracks are used" in a bowling alley, "one for each contesting side in bowling a single game, and these two tracks are used at all times in bowling a single game, and no more than one game is at any time played upon the two tracks," is it considered by this office that there is but one bowling alley on which special tax is required to be paid under the ninth paragraph of section 2 of the act of June 13, 1898?

You are hereby advised in the negative. In places where games of bowling are carried on, the divisions which you denominate "tracks" are not known as tracks, but are called "alleys;" and the statute requires that the proprietors of bowling alleys and billiard rooms shall pay \$5 "for each alley or table." The last sentence of this paragraph describes the building or place which "shall be regarded as a bowling alley or a billiard room, respectively."

As it is clear, however, that the special tax of \$5 is not sufficient for a billiard room in which there are several tables, but that the tax shall be paid for each table, for the same reason it is held by this office that it is not sufficient that but one special tax of \$5 be paid for the "building or place where bowls are thrown," but that this special tax shall be paid for each separate space known as an alley in such building or place; and that it is immaterial, therefore, whether (as you state) the two or more alleys "are used at all times in bowling a single game" or not.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Mr. A. D. LOONEY, *Mitchell, Oreg.*

BROKERS.

(See also DECISIONS 20648, p. 77; 20723, p. 11; 20727, p. 236; 21021, p. 82; 21152, p. 12.)

(20542.)

Special tax—Broker—Commercial broker.

The buying of real estate at delinquent-tax sales is not the business either of a broker or commercial broker as defined by the statute.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 11, 1899.

GENTLEMEN: In reply to your letter of the 4th instant, you are hereby advised that the purchase of real estate at a delinquent-tax

sale does not involve the purchaser in special-tax liability under section 2 of the act of June 13, 1898 (the war-revenue act), as such purchases are not part of the business either of a broker or a commercial broker within the definitions contained in sections 2 and 4 of this act.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Messrs. WICKENS & OSBORN, *Greensburg, Ind.*

(20544.)

Special tax—Banker or broker.

The business of loaning money on real estate, taking the note of the borrower and mortgage, does not involve the lender in special-tax liability either as a banker or broker under the war-revenue act.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 11, 1899.

SIR: In reply to a letter addressed to this office on the 28th ultimo, by Mr. L. H. Heller, of Milwaukee (Montgomery Building), * * * you will please inform him that the business of loaning money on real estate, taking the note of the borrower and mortgage, is not such business as involves the lender in special-tax liability either as a banker or a broker under the second section of the act of June 13, 1898.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. HENRY FINK, *Collector First District, Milwaukee, Wis.*

(20549.)

Broker—Definition of the term.

It is the language of the statute, and not the ordinary and usual meaning of the word "broker," which must govern in determining who is a broker required to pay special tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 16, 1899.

GENTLEMEN: Your letter of the 12th instant has been received, submitting the question "whether a person engaged in buying commercial paper, using his own funds in all cases and acting only for himself, is a broker within the meaning of section 2 of the war-revenue law."

As you suggest, the term "broker," in the general meaning of this word, "clearly implies a person acting for others, and a person acting

only for himself is in no sense a broker," unless a special meaning is given to the word "broker" by the terms of the statute.

By the terms of paragraph 2 of section 2 of the act of June 13, 1898 (by which alone this office must be guided in determining who are brokers subject to special tax), it is declared that every person, etc., whose business it is to negotiate purchases or sales of stocks, etc., "for themselves * * * shall be regarded as a broker."

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Messrs. C. R. & C. U. CARRUTH, *Buffalo, N. Y.*

(20593.)

Special tax—Broker.

A person who is engaged in the business of selling domestic or foreign exchange to his customers is required to pay special tax as a broker.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 19, 1899.

SIR: In reply to an inquiry addressed to this office by Mr. K. T. Thompson, a merchant at Houston, Minn., as to whether he can sell domestic and foreign exchange to his customers without being required to pay special tax as a banker, you will please inform him that while such sales would not involve him in special-tax liability as a banker, yet, under the provisions of paragraph 2 of section 2 of the act of June 13, 1898, he could not engage in the negotiation of the sale of exchange without subjecting himself to special tax as a broker.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. F. VON BAUMBACH,

Collector Internal Revenue, St. Paul, Minn.

(20594.)

Special tax—Broker.

Persons who receive money from those who wish to send remittances to foreign countries and procure for them bills of exchange, if they receive a commission on the exchange thus purchased, are brokers under the second paragraph of section 2 of the war-revenue act and must pay special tax accordingly.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 19, 1899.

SIR: Your letters of the 10th and 12th instant have been received, relating to Emilio Conte and M. L. Blitzstein, who sell steamship tickets and, in addition to this business, "transmit currency and checks, giving receipts therefor, for others to banks who issue on account thereof bills of exchange on foreign countries."

It is understood that these persons receive money from those who

wish to send remittances to foreign countries and procure for them bills of exchange. If so, this is the negotiation of the purchase of exchange, within the meaning of the second paragraph of section 2 of the act of June 13, 1898; and if they receive a commission on such purchases and make this any material part of their business, they are brokers under that paragraph and should be reported for assessment accordingly. * * *

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. P. A. McCLAIN, *Collector First District, Philadelphia, Pa.*

(20603.)

Special tax—Tobacco warehousemen.

Warehousemen who sell leaf tobacco on commission are required to pay special tax as leaf tobacco dealers: and if they neither acquire possession of, nor right or title to, leaf tobacco which they sell on commission as agents for others, they must also pay special tax as commercial brokers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 23, 1899.

GENTLEMEN: In reply to your letter of inquiry of the 17th instant, you are hereby advised that by reference to regulations, series 7, No. 8, revised August 18, 1898, which will be shown you at the office of the collector in Raleigh, N. C., Mr. E. C. Duncan, you will find that warehousemen who buy and sell tobacco on commission are held liable for payment of special tax as dealers in leaf tobacco at each place where they carry on such business. In addition to this special tax they must pay special tax as commercial brokers, if the facts are that they neither acquire possession of, nor any right or title to, the leaf tobacco which they sell on commission as agents for others.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

A. S. HUNDEN & CO., *Scotland Neck, N. C.*

(20604.)

Special tax—Branch offices of brokers.

Special tax is required to be paid for every broker's branch office at which all equipments for business are kept, together with memorandum pads of transactions, ticker recording sales and purchases of stock exchange, and blackboard indicating value of stocks.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 23, 1899.

SIR: From the tenor of your letter of the 15th ultimo, concerning the report made by Revenue Agent McGinnis for assessment of special

tax against the Cassidy-Buell Company as brokers and commercial brokers, and submitting correspondence between yourself and that company, it is evident that you are encountering the same difficulties as collectors in other districts, in endeavoring to take uniform action with regard to branch offices of brokers, and that there is a disposition upon the part of brokers to extend the ruling as to small offices in charge of a single clerk (ruling 20374¹) beyond the intention of this office in making such ruling.

The conclusion arrived at here, therefore, is that the ruling should be applied by collectors with the utmost strictness, so that it shall not be extended to any branch offices except those that are similar to the small offices that are found in the lobbies of hotels, at each of which but a single clerk is employed to take and transmit orders to the main office without transacting any other business whatever. It is held, therefore, that special tax must be required to be paid for branch offices of brokers that have all the paraphernalia for an active business, where orders are received with checks and moneys accompanying to purchase stock, which checks or moneys are transmitted by the employee to the main house, and where, though no books are kept, memorandum pads are kept, which answer as a blotter, which is sent to the main house and copied into the books of the firm, where, also, statements are issued to the different customers at the branch offices where they call, and a ticker is on exhibition recording sales and purchases of the stock exchange, and a blackboard indicating the value of the stocks dealt in.

You may report all such branch offices in your next list for assessment of the special tax (but without the 50 per cent penalty, in view of the doubt heretofore existing as their liability), and refer to this letter as your authority for so doing. Anything to the contrary found in ruling No. 20374¹ is to be regarded as modified in accordance herewith.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. A. J. DAUGHERTY, *Collector Fifth District, Peoria, Ill.*

¹Compilation of Decisions Rendered by the Commissioner of Internal Revenue under the War-Revenue Act of June 13, 1898 (January, 1899), page 75.

(20637.)

Special tax—Broker—Mining syndicate.

While a mining syndicate, or other association, issuing certificates of stock in a company organized by it is not required to pay special tax as a broker therefor, a manager or other person employed by it to sell such certificates on commission is a broker within the meaning of the second paragraph of section 2 of the act of June 13, 1898, and is required to pay special tax accordingly.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 26, 1899.

SIR: Your letter of the 21st ultimo has been received, inclosing a letter addressed by the president of the Washington Cooperative Mining Syndicate, of Tacoma, Wash., to your deputy, Mr. Metschan, containing a statement of the mode in which this syndicate does business in the distribution of mining stock, and inclosing a copy of the by-laws.

From section 9 of article 13 of these by-laws, it appears that the entire charge of the sale of the capital stock of this company is in the hands of the general manager of the stock-sales department, who is required to advance and pay all expenses of selling, placing, and disposing of the capital stock of the company, and that all expenses of this department, and all liability therefor, shall be and always remain the individual and sole charge and personal liability of the general manager, and "in consideration of his assumption of these liabilities," etc., "he shall have and retain, out of the premium received by him on stock sales, such sum per share on all stock disposed of by or through him, for which application for purchase shall have been approved by the executive board of the company, as shall be in writing previously agreed upon between him and the company."

Upon this statement, you are hereby advised that the general manager, whose business it is to negotiate sales of this stock, must be required to pay special tax as a broker, under paragraph 2 of section 2 of the act of June 13, 1898.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*Mr. DAVID M. DUNNE, *Collector Internal Revenue, Portland, Oreg.*

(20640.)

Special tax—Broker.

A company or corporation, which merely disposes of its own stock and bonds for the purpose of obtaining money to conduct the business for which it was organized, is not required to pay special tax therefor as a broker under the second paragraph of section 2 of the war-revenue act. But if it employs an officer or agent, whose business it is to negotiate these sales for a commission or premium thereon, such person must pay special tax as a broker.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 26, 1899.

SIR: Your letter of the 21st instant has been received, inquiring "whether or not a company, organized under the laws of the State

where operated, must take out a license for the sale of its own stock and bonds."

If the company or corporation merely disposes of its own stock and bonds for the purpose of obtaining money to conduct the business for which it was organized, it is not, on this account, required to pay special tax as a broker under the second paragraph of section 2 of the act of June 13, 1898.

But if the company employs an officer or agent, whose business it is to negotiate these sales for a commission or premium thereon, such person must be required to pay special tax as a broker under this act.

The Supreme Court, in the case of *Warren v. Shook*, collector (91 U. S., 704), referring to the definition of a broker as contained in the statute at that time in force, the language of which is the same as that in the war-revenue act, defining a broker, said:

All parts of the definition are qualified by the words "whose business it is." Thus, if A. B. has \$10,000 which he desires to invest, and purchases United States stock, or State stock, or any other securities, he does not thereby become a broker. Nor if he owns \$10,000 of United States stock which he wishes to sell to raise money to pay his debts, or because he is not satisfied with 6 per cent interest, is he thereby made a broker. It is only when making sales and purchases is his business, his trade, his profession, his means of getting his living, or of making his fortune, that he becomes a broker within the meaning of the statute.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner*.

Hon. J. A. T. HULL, *House of Representatives, Washington, D. C.*

(20650.)

Stamp tax—Foreign money orders.

Instruments used by foreign money-order brokers.—When and how taxable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 31, 1899.

SIR: This office is in receipt of your letter under date of January 21, 1899, in which you refer to the letter from this office of the 10th instant, regarding the stamping of the letters of instructions sent by foreign money-order brokers to their correspondents in New York, or elsewhere within the United States, to remit certain sums of money abroad, and you refer particularly to the paragraph contained therein to the effect that you were in error in instructing the brokers to stamp Form No. 2, as it was not held by this office to be in any sense an order for the payment of money.

You state that you based your instructions to the brokers upon the opinion expressed in the letter of November 18, 1898, from this office

to Mr. F. D. Sewall, revenue agent, Boston, Mass., on the same subject.

Form No. 2, above referred to, which was submitted by you in your letter of December 28, 1898, was held by this office not to be subject to taxation, inasmuch as it was merely a letter of advice accompanying a remittance, with instructions as to what disposition should be made of the proceeds of said remittance.

The question of how foreign money-order brokers conducted their business was not clearly understood at the time the letter, under date of November 18, 1898, was written to Revenue Agent F. D. Sewall, and in this connection you will please accept the following as the ruling of this office:

When a broker accepts from a customer a sum of money which said customer wishes sent to a third party abroad, and said broker gives said customer a receipt, which receipt is retained by said customer, and the broker remits to the correspondent in New York, or elsewhere within the United States, the amount said customer wishes sent abroad, accompanying the remittance with a letter of advice or instructions to said correspondent of what disposition to make of the proceeds of said remittance, this office holds that said letter of advice or instructions is not subject to taxation. Should, however, a broker send a letter of advice or instructions to his correspondent in New York or elsewhere within the United States *unaccompanied* by a draft, check, or other order for the payment of money, the correspondent being directed in such letter of advice to pay a certain sum of money to a certain person and charge to the broker's account, then this office rules that such letter of advice would be subject to taxation as an order for the payment of money at sight or on demand, and should have a 2-cent stamp affixed thereto.

If the broker deals directly with correspondents abroad, the same ruling as above set forth holds good, with the exception that a letter of advice if *unaccompanied* by any remittance should bear stamps at the rate of 4 cents per \$100 or fraction thereof.

In some instances foreign money-order brokers give to their customer who wishes to send money abroad a form of receipt which is forwarded by said customer to the person abroad to whom the money is to be paid, and this latter person, upon presentation of this receipt at the place of payment designated, obtains his money.

Under these circumstances, this office rules that this receipt is subject to taxation as an order for the payment of money drawn in the United States but payable abroad, and must have stamps affixed at the rate of 4 cents per \$100 or fraction thereof of the amount named therein.

Respectfully, yours,
Mr. J. C. P. KINCAID, *Revenue Agent, New Orleans, La.*

N. B. SCOTT, *Commissioner.*

(20676.)

Special tax—Brokers.

Persons whose business it is, as agents for others, to negotiate sales of mortgages on commission are required to pay a special tax as brokers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 4, 1899.

SIR: In reply to a letter addressed to this office on the 28th ultimo, by Mr. H. P. Nichols, of Nichols, Conn., * * * you will please inform him that persons who are engaged, as he states, as agents for others in negotiating sales of mortgages, on commission, are held to be brokers within the meaning of the second paragraph of section 2 of the act of June 13, 1898.

Respectfully, yours, N. B. SCOTT, *Commissioner.*
Mr. THOS. A. LAKE, *Collector Internal Revenue, Hartford, Conn.*

(20717.)

Special tax—Brokers—Steamship agents.

Steamship agents who are engaged in selling drafts or bills of exchange on commission are required to pay special tax as brokers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 14, 1899.

SIR: In reply to your verbal inquiry of this date, you are hereby advised that while special tax is not required to be paid under the second section of the act of June 13, 1898, for the sale of steamship passenger tickets, yet steamship agents who make it their business, or any material part of their business, to sell drafts or bills of exchange, on commission, must be required to pay special tax as brokers under the second paragraph of that section, which expressly requires that persons "whose business it is" to negotiate sales of "exchange" shall be regarded as brokers.

Respectfully, yours, N. B. SCOTT, *Commissioner.*
Mr. CLAUDE M. BENNETT, *Washington D. C.*

(20785.)

Special tax—Sales of foreign exchange by express companies.

Negotiation of sales of exchange, including foreign drafts as well as domestic, is the business of a broker, as defined by the statute.—Express companies engaged in the business of selling exchange are required to pay special tax as brokers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 1, 1899.

GENTLEMEN: In reply to the several questions contained in your letter of the 15th ultimo, relating to the special tax required to be paid by brokers, you are hereby advised that your domestic correspondent, to whom you refer, if it is his business or any material part of his business, whether as principal or agent, to negotiate sales of exchange (including foreign drafts as well as domestic), must do so under the special-tax stamp of a broker, held either in his principal's name (if he is acting as agent) or in his own name. The fact, which you suggest, that he "confines his sales to foreign money orders only," could not entitle him to any relief from this special tax, if, as it is understood, these money orders are "exchange," within the meaning of the second paragraph of section 2 of the act of June 13, 1898.

If you are engaged in this business at your branch office, this special tax must be paid for that office, unless you have paid for that place of business special tax as bankers, in which case the provisions of the statute entitle you to carry on business as brokers there, as well as the banking business, without paying special tax as brokers.

As to express offices in the United States, about whose special-tax liability you inquire, you are further advised that any express companies, shown to be engaged in the business of selling "exchange" (drafts or bills of exchange), are required to pay special tax as brokers. * * *

Respectfully, yours, G. W. WILSON, *Commissioner*.
Messrs. C. B. RICHARD & Co., *New York, N. Y.*

(20790.)

Special tax—Steamship ticket agents selling money orders.

Steamship agents (as well as others) engaged in the sale of money orders that come under the head of "exchange," as this word is used in the second paragraph of section 2, act of June 13, 1898, are required to pay special tax as brokers.—Modification of former ruling.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 6, 1899.

SIR: Your letter of the 21st ultimo has been received, inclosing a circular issued by Knauth, Nachod & Kühne, informing steamship

agents that they are not required to pay special tax as brokers for selling passenger tickets and money orders, in view of a ruling of this office to Collector McClain, of Philadelphia, dated August 8, 1898.

The collector at Philadelphia has been informed by this office of the revocation of so much of that ruling as has been understood as relieving from special-tax liability steamship agents or others engaged in the sale of any money orders that come under the head of "exchange" within the meaning of the second paragraph of section 2 of the act of June 13, 1898.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. CHAS. H. TREAT,
Collector Second District, New York, N. Y.

(20873.)

Special tax—Brokers.

A person must pay special tax as broker if he holds himself in readiness to make purchases and sales of securities mentioned in paragraph 2, section 2, of the war-revenue act, and is known to the public as engaged in such business, even though the amount of business done is small.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 15, 1899.

SIR: In reply to your letter of the 3d instant, you are hereby advised that a person who is engaged, either as agent for others or for himself, in the negotiation of purchases or sales of any of the securities mentioned in the second paragraph of section 2 of the war-revenue act is required to pay special tax as a broker, without reference to any facts that may be submitted by him showing that the amount of this business done by him during the year is comparatively small. If he holds himself in readiness to make such purchases or sales, and is known to the public as engaged in such business, it matters not in such a case that this is not his principal business. It is held to be a material part of business in which he expects to make a livelihood, and, therefore, he must be required to pay the special tax.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. JAMES D. GILL, *Collector Third District, Boston, Mass.*

(20919.)

Special tax—Broker.

The special tax of a broker is not required to be paid for the receipt and transmission of money where there are neither purchases nor sales of any money orders, drafts, bills of exchange, or any other instruments constituting "exchange" in contemplation of the second paragraph of section 2, act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 25, 1899.

SIR: In a letter to this office, dated the 2d instant, Messrs. C. B. Richard & Co., bankers, 61 Broadway, New York, N. Y., submit the question whether their domestic correspondents are required to pay special tax as brokers under the second paragraph of section 2 of the act of June 13, 1898, by reason of receiving money from persons who desire to make remittances to friends in Europe, and sending this money to C. B. Richard & Co. with an order for its payment, blank forms for this purpose (specimens of which accompany their letter) being furnished by Richard & Co. to their correspondents throughout the United States.

The system by which moneys are thus received and transmitted to Europe is described by C. B. Richard & Co. as follows:

B, a customer, comes to A, say at Asheville, N. C., and requests that \$10 be transmitted to C at Friedrichsrue, Germany. A gives B a receipt (like inclosed Form III) for the money B pays to A. Thereupon, A instructs us at New York, by blank Form II, which serves as a letter of advice or instruction, to transmit the funds to C in Germany, no mention being made for whose account the funds are to be transmitted to C. We, in turn, then send instructions to our Hamburg bankers, as follows: "Messrs. ———, bankers, Hamburg, Germany. Please send by registered letter to C, at Friedrichsrue, the sum of 40 marks."

In due time the postmaster at Friedrichsrue delivers the registered envelope into the house of C.

C receives no order for payment, no letter of advice—in fact, absolutely nothing whatever to show that he is entitled to the payment of any money. Neither would he know that money was on the way unless B should notify him thereof by letter, and even then he would be ignorant of the manner in which the funds would be paid out to him. The receipt (Form III) is retained by B, but even though he send it to C in an exceptional case, it bears no indication as to how or whence the money is to come to him.

It appears from this statement that the person who deposits the money in the hands of the correspondent of Messrs. C. B. Richard & Co., for transmission to some person elsewhere, receives no money order or draft or anything in the nature of a bill of exchange. He is given only a receipt for this money, in which are stated the name and address of the person elsewhere to whom it is to be paid. The only

money order used in this transaction is one sent by the local correspondent to C. B. Richard & Co., directing them to pay the sum forwarded at the place and to the person named therein; and this money order is retained by C. B. Richard & Co.; and there is no sale of it either by them or by their local correspondent.

There being nothing in the transaction thus described that constitutes the sale of "exchange," it must be held that the local correspondent is not required to pay special tax as a broker under the statute on account of being engaged in thus receiving and transmitting money.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. CHAS. H. TREAT, *Collector Second District, New York, N. Y.*

(21075.)

Special tax—Steamship agents selling exchange.

Agents of steamship companies (as well as other persons) who hold themselves in readiness to sell foreign exchange, and are so known to the public, are required to pay special tax as brokers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 28, 1899.

SIR: The arguments submitted by the representatives of foreign steamship lines, as set forth in your letter of the 3d instant, against the ruling of this office that their agents, engaged in the business of selling foreign drafts, are subject to special tax as brokers, under the second paragraph of section 2 of the act of June 13, 1898, have had full consideration; and I have also considered a letter of the 5th instant on this subject from the White Star Line, inclosing a large number of letters from steamship agents setting forth the impossibility of continuing to act as agents in the sale of foreign drafts if they are required to pay special tax as brokers.

The ruling of this office on this subject is that steamship agents as well as all other persons who are engaged in the business of selling "exchange" must be regarded as brokers and required to pay special tax under the terms of the statute. The argument which you say they have made to you, "that as they pay a very heavy tax on the sale of each ticket, and also on their bills of lading, custom-house entries, and clearances, stamp tax on certificates, etc., * * * they should not be included in further liability for selling exchange drafts as other money-order brokers, because their drafts are only sold in connection with their ticket agency," can not be given any weight in the question of the special-tax liability of their agents for carrying on the business of selling foreign exchange. However heavy these taxes paid under other provisions of the war-revenue act

may be, as the liability therefor is, under the statute, entirely distinct from the special-tax liability arising under the second section of the act for the carrying on of the business of brokers, they can not be taken into consideration as in any manner entitling their agents thus carrying on the brokers' business to relief from the special tax, even if the fact were otherwise than as you state, with reference to stamp tax, that in the "sale of drafts and tickets * * * they do not pay this tax, but the passenger does, the same as the buyer of a draft pays for the exchange, while the stamp tax on bills of lading is charged to the shipper."

You may, therefore, inform the representatives of the steamship lines that all their agents throughout the United States who hold themselves in readiness to sell foreign drafts, and are so known to the public, must be regarded as engaged in the business of selling "exchange" within the meaning of this word as it is found in the statute, and must pay special tax as brokers accordingly and take out the requisite stamp for each place at which this business is carried on by them.

The suggestion which has been made to you, "that they are willing, as steamship companies, to take out a broker's license if it could include their agents in the country," is out of the question in view of the first clause of section 3235, Revised Statutes (which is extended to special taxes under the war-revenue act by section 31 of that act), providing that "the payment of the special tax imposed shall not exempt from an additional special tax the person carrying on a trade or business in any other place than that stated in the collector's register."

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. CHAS. H. TREAT,
Collector Second District, New York, N. Y.

(21151.)

Stamp-tax—Instruments used by stockbrokers.

Opinion of the Attorney-General relative to taxation of instruments used by stockbrokers and known as "puts" and "calls."—"Spreads" held to be taxable under same opinion.—Modification of former ruling.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 12, 1899.

SIR: I inclose for your information and guidance a copy of the Attorney-General's opinion on the question of the taxation of agreements known in stockbrokers' parlance as "puts" and "calls" under Schedule A of the war-revenue act.

These instruments are held to be not taxable under the paragraph headed "Contract, broker's note," etc., but the instrument known as a "call" is held to be taxable under the first paragraph of Schedule A, which imposes a stamp tax on an agreement to sell stock of 2 cents on each \$100 of face value, or fraction thereof. "Puts" are held to be not taxable under the war-revenue act.

The question of the taxation of what is known in stockbrokers' parlance as a "spread" was not submitted to the Attorney-General. A "spread" is understood to be a combination of a "put" and "call," or an agreement to buy or sell stock within a specified time at the option of the holder of the instrument. The "call" embodied in this instrument is clearly taxable, according to the amount represented thereby, at the rate of 2 cents for each \$100 of face value, or fraction thereof, and it is so held.

The ruling of this office dated September 24, 1898, and published as Treasury decision 20093,¹ so far as it held "puts" to be taxable, is hereby modified in accordance with the opinion of the Attorney-General.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. CHAS. H. TREAT, *Collector Second District, New York, N. Y.*

DEPARTMENT OF JUSTICE,
Washington, D. C., April 27, 1899.

THE SECRETARY OF THE TREASURY.

SIR: In yours of December 7, 1898, the receipt of which I have the honor to acknowledge, you inclose two exhibits, marked, respectively, A and B, and you request my opinion as to whether the instruments of which these exhibits are copies, when used as evidence of transactions by brokers, are required to be stamped under that paragraph of Schedule A of the war-revenue act, which is as follows:

"Contract: Broker's note, or memorandum of sale of any goods or merchandise, stocks, bonds, exchange, notes of hand, real estate, or property of any kind or description issued by brokers or persons acting as such, for each note or memorandum of sale, not otherwise provided for in this act, ten cents."

Exhibit A is a copy of the written evidence of a transaction called, in brokers' parlance, a "put," and is after this form:

NEW YORK, November 21, 1898.

For value received, the bearer may deliver me, on one day's notice, except last day, when notice is not required, one hundred shares of the capital stock of the Chicago, Burlington and Quincy Railroad Company, at one hundred and seventeen (117) per cent, any time in seven days from date.

All dividends for which transfer books close during said time go with the stock.

In consideration that the foregoing "put" is made to run to 3 p. m., the right to put the same "cash" is not permitted.

Expires November 28, 1898, 3 p. m.

JOHN DOE.

¹ Compilation of Decisions Rendered by the Commissioner of Internal Revenue under the War-Revenue Act of June 13, 1898 (January, 1899), page 66.

Exhibit B represents the writing used in what is termed a "call," and reads thus:

NEW YORK, November 21, 1898.

For value received, the bearer may *call on me*, on one day's notice, except last day, when notice is not required, one hundred shares of the capital stock of the Chicago, Burlington and Quincy Railroad Company, at one hundred and twenty-three (123) per cent, any time seven days from date.

All dividends for which transfer books close during said time go with the stock.

In consideration that the foregoing "call" is made to run to 3 p. m., the right to call same "cash" is not permitted.

Expires November 28, 1898, 3 p. m.

RICHARD ROE.

The transactions represented by the two exhibits are certainly not taxable under the provision of law above quoted, because neither of them can be construed as a broker's note or memorandum of a sale. They do not evidence a sale completed, nor can they be construed as executory contracts for sales to be completed subsequent to their making.

I am of the opinion that Exhibit A is not taxable under any provision of the war-revenue act, for it is an agreement on the part of the signer to buy stock, but the opportunity to buy is entirely dependent upon the disposition of the party (the bearer) to whom the paper is given. There is no provision of the war-revenue act, so far as I can find, which taxes such a transaction.

I take a different view, however, of Exhibit B. In that case the signer agrees to sell the stock described in the paper, at the price named, provided the holder of the paper calls upon him within the time specified. I think this transaction is subject to the tax provided under that portion of the first paragraph of Schedule A of the war-revenue act, which reads as follows:

* * * "and on all sales, or agreements to sell, or memoranda of sales or deliveries or transfers of shares or certificates of stock in any association, company, or corporation, whether made upon or shown by the books of the association, company, or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money or for the future transfer of any stock, on each hundred dollars of face value, or fraction thereof, two cents."

It is true that the completion of this transaction depends upon whether the bearer elects to buy the stock described within the time and at the price named, but very certainly the maker agrees to sell, provided the bearer comes forward and requires it.

Very respectfully,

JAMES E. BOYD,
Assistant Attorney-General.

Approved:

JOHN W. GRIGGS, *Attorney-General.*

(21279.)

Stamp tax—Bucket shops.

Bucket shops defined.—Tax on agreements to sell shares of stock or merchandise at such places.—Treasury ruling 20274¹ revoked.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 16, 1899.

SIR: Referring to your letters of the 16th and 31st ultimo, in regard to the sales of shares of stock at what are known as "bucket shops," I have to advise you as follows:

By a bucket shop is meant a place other than a board of trade or exchange where the parties who agree to buy and sell stocks do not ordinarily contemplate the receiving or delivering of any certificates therefor by the buyer or seller either at the time or in the future. Such transactions in stocks are taxable at the rate of 2 cents for each \$100 of par value.

Every agreement for the sale of stock, or any interest therein, must be evidenced by a memorandum in writing showing the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers, to which memorandum the stamp must be affixed.

In the case of every agreement to sell at a bucket shop there is both a presumptive buyer and a presumptive seller, and this is true whether the customer agrees to sell stock to the manager of the place or the manager of the place agrees to sell stock to the customer. In either case, a memorandum of the agreement must be made and stamped.

Where an agreement of sale has been made and no delivery of stock takes place, and the party holding the agreement of sale wishes to close the transaction by disposing of his interest in said agreement and settles with the holder of the contract by paying the difference between the agreed price and the market price, in contemplation of law there is an agreement to resell the shares to the original seller, which must be evidenced by a written memorandum, to which a stamp must be affixed according to the par value of the stock so resold.

It makes no difference whether these agreements to sell made at bucket shops are called "selling privileges" or "purchase privileges," or whether they are called by any other name, such contracts are taxable as above set forth.

Relating to the sales of grain and other products or merchandise at bucket shops, you are advised that, in view of the recent decision of the United States Supreme Court in regard to the sales of merchandise at a board of trade, exchange, or any similar place, this office revokes the decision contained in Treasury ruling 20274,¹ that a

¹ Compilation of Decisions Rendered by the Commissioner of Internal Revenue under the War-Revenue Act of June 13, 1898 (January, 1899), page 73.

bucket shop as ordinarily conducted is a similar place to a board of trade or exchange.

It clearly appears from the decision above referred to that a "similar" place must be one where buyers and sellers freely meet to buy and sell. There must not only be a number of buyers but a number of sellers, all enjoying the same privileges, either under corporate supervision or otherwise.

It is understood that in the case of a bucket shop there is commonly only one manager or firm who controls all the sales and purchases made at that particular place, and where this is the case no tax accrues on the sale of grain or other merchandise made thereat, except where a broker's contract or memorandum of sale is issued it must be stamped with a 10-cent stamp.

Respectfully, yours,

G. W. WILSON, *Commissioner.*

Mr. F. G. THOMPSON, *Revenue Agent, New York, N. Y.*

(21396.)

Stamp tax—Sales of grain.

Sales of grain made at an exchange, and sales of grain made by brokers in their own offices.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 15, 1899.

SIR: I have to acknowledge the receipt of your letter of the 10th instant, in relation to the sales of grain made at the Buffalo Merchants' Exchange and the liability of said sales to the stamp tax.

You state that sales made by members of the exchange are of three kinds: 1, sales made on the floor of the exchange; 2, sales made in the offices of members of the exchange, but made to fellow-members of the exchange (these sales are subject to the rules of the exchange, although not made on the floor); 3, sales made by correspondence or telegrams, made in the offices of members to persons in no way connected with the exchange. You ask which of these three classes are subject to the rate of 1 cent on each \$100 of value imposed by Schedule A of the act of June 13, 1898.

In reply, you are advised that in the opinion of this office sales of the first and second classes are liable to the tax imposed by the second clause of Schedule A of the war-revenue act.

The third class, which are sales made by correspondence or telegrams, made in the offices of members and not on the floor of the exchange, not subject to any rules or regulations of the exchange, would be subject to a tax of 10 cents on the note or memorandum of

sale issued by brokers or persons acting as such under that clause of Schedule A headed "Contract."

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. CHARLES H. KEEP,
Secretary Buffalo Merchants' Exchange, Buffalo, N. Y.

(21521.)

Special tax—Brokers—Railroad agents exchanging foreign money.

Railway agents who exchange foreign money for American money and vice versa, merely in the transaction of the freight and passenger business of their company, do not thereby involve themselves in special-tax liability as brokers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 22, 1899.

SIR: Your letter of the 10th instant has been received, inclosing a letter from your deputy at El Paso, Tex., Mr. Edwin C. Roberts, relating to the question of the special-tax liability of the agents of the Atchison, Topeka and Santa Fe Railroad Company at that place (Messrs. F. B. Houghton and J. S. Morrisson) as brokers, on account of their dealings in Mexican money.

It appears from letters addressed to Mr. Roberts by Mr. Morrisson and Mr. Houghton that the transactions for which you are disposed to hold them liable as brokers consist in exchanging Mexican money for American money and vice versa.

If, as it is understood, they confine these exchanges of money strictly to the transaction of the freight and passenger business of their railroad company, in the opinion of this office it can not properly be held that they are engaged in the business of negotiating "purchases or sales of * * * coined money" within the meaning of the second paragraph of section 2 of the act of June 13, 1898, defining brokers.

You will please so inform your deputy, and direct him to withdraw any demand notice made for payment of special tax from these railway agents on this account.

Respectfully, yours, ROBT. WILLIAMS, Jr.,
Acting Commissioner.
Mr. WEBSTER FLANAGAN, *Collector Third District, Austin, Tex.*

(21540.)

Stamp tax—Stocks, grain, etc.

Tax on agreements to sell shares of stock or merchandise issued by brokers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 26, 1899.

SIR: This office is in receipt of a letter from Messrs. J. B. Dortch & Co., brokers, Memphis, Tenn. These gentlemen state that they have

recently been informed that they have not been complying with the law as to the stamping of their stock and grain transactions, and desiring to comply in all respects with the law, they ask to be informed as to the method they should follow in stamping their memoranda of sales. They state that they are doing a strictly commission business in stocks, bonds, grain, cotton, and provisions, and all orders are executed on the exchanges of Chicago and New York.

You will please advise these gentlemen as to the requirements of the law in regard to the stamping of memoranda of sales issued by brokers. If these gentlemen conduct a legitimate stockbrokers' business and place all their orders for their own account on the exchanges at Chicago and New York, the memoranda of sales covering stock transactions which they issue to their customers should be stamped at the rate of 2 cents per \$100, or fraction thereof, of the face value, and the memoranda of sales covering grain and other transactions, which they give their customers, should be stamped at the rate of 10 cents, and their Chicago and New York correspondents are obliged to stamp the memoranda of sales covering the orders received from Messrs. J. B. Dortch & Co. for their account.

However, if Messrs. J. B. Dortch & Co. act merely as agents for New York and Chicago brokers and place orders with such brokers for the account of other persons, and not their own account, then the only tax imposed is on the memoranda of sales by the New York and Chicago brokers. If, however, these gentlemen conduct a bucket shop, you will advise them in accordance with Treasury decision 21279 (p. 61).

Respectfully, yours,

ROBT. WILLIAMS, Jr.,

Acting Commissioner.

Mr. D. A. NUNN, *Collector Internal Revenue, Nashville, Tenn.*

(21607.)

Special tax—Bucket-shop proprietors as brokers.

Proprietors of bucket shops, who issue memorandums of their transactions in stocks and in cotton, grain, etc., even though they sell only "futures," are required to pay special tax both as brokers and as commercial brokers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., September 14, 1899.

SIR: In reply to your letter of the 31st ultimo, you are hereby advised that proprietors of bucket shops, who issue memorandums of their transactions in stocks, bonds, bullion, etc., are required to pay special tax as brokers under the second paragraph of section 2 of the act of June 13, 1898, even when (as you state) they only sell or offer for sale "futures in stocks," etc.; and when such persons issue memorandums of transactions in "futures in cotton, grain, and hog prod-

ucts," they are required to pay special tax also as commercial brokers under the fourth paragraph of that section. See ruling 20167,¹ which you are instructed to apply to bucket-shop proprietors dealing in futures only, as well as to regular brokers and commercial brokers.

Respectfully, yours, G. W. WILSON, *Commissioner*.

Mr. WEBSTER FLANAGAN, *Collector Third District, Austin, Tex.*

(21620.)

Special tax—Brokers.

Loan and mortgage companies are not liable for special tax as brokers unless they engage in the sale of the securities on which they make loans. When they engage in such sales they become brokers, and are required to pay special tax accordingly.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 22, 1899.

SIR: Your letter of the 7th instant has been received, inclosing letters addressed to you by Mr. H. J. Putnam, vice-president of The Crippen-Lawrence Investment Company, of Denver, disputing the correctness of the position which you have taken, that his company has involved itself in liability as a broker under the second paragraph of section 2 of the act of June 13, 1898.

Mr. Putnam bases his contention on the ground that his company makes "loans upon real estate by bond and mortgage, * * * disposing of them to private customers," and that "the latest circular put out by the Commissioner states that loan and mortgage companies are not liable for tax as brokers."

Loan and mortgage companies are not liable for tax as brokers when they confine their business to loaning money upon real estate, taking notes, bonds, and mortgages as security; but when they engage in the sale of these securities they engage in the business of a broker as defined by the statute, and must be required to pay special tax accordingly. There appears to be no doubt that these are the facts with regard to Mr. Putnam's company, The Crippen, Lawrence Investment Company.

You say that "from the fact that they negotiate sales of these notes" you "have held that the company was liable for the payment of special tax as brokers under paragraph 2, section 2, of the act of June 13, 1898, but so far have been unable to secure an application for same from them."

As they have not complied with your request for a special-tax return, you will report them in your next list for assessment of the special tax and penalty. The proper course for them to have pursued, in denying

¹Compilation of Decisions Rendered by the Commissioner of Internal Revenue under the War-Revenue Act of June 13, 1898 (January, 1899), page 70.

their liability, was to have made return and paid the special tax under protest, and then put in a claim for the redemption of the stamp. As they have not taken this course and have neglected or refused to make the special-tax return, it becomes necessary to add 50 per cent, under section 3176, Revised Statutes, to the special tax for which it is held they are liable under the law.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Mr. F. W. HOWBERT, *Collector Internal Revenue, Denver, Colo.*

(21647.)

Special tax—Brokers.

Persons engaged in the business of buying fee bills of witnesses on which warrants are issued and paid are held to be engaged in the business of brokers under the second paragraph of section 2, act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 10, 1899.

SIR: Your letter of the 29th ultimo has been received, inclosing "a sample witness fee bill" used in the State of Texas, and inquiring whether persons engaged in the purchase of such fee bills are required to pay special tax as brokers under the second paragraph of section 2 of the act of June 13, 1898.

You say as to each of these fee bills:

Before a warrant is issued upon it, it must be audited by the State comptroller, who issues the warrant if it is found correct. The statement as to mileage and days in attendance on court is fixed in this instrument by the witness himself.

You are hereby advised that every person engaged in buying these fee bills, who thereafter obtains warrants thereon for their payment, is held to be a broker.

Respectfully, yours,
ROBT. WILLIAMS, Jr., *Acting Commissioner.*
Mr. P. B. HUNT, *Collector Fourth District, Dallas, Tex.*

(21707.)

Stamp tax—Bucket shops.

No tax on the closing of a stock transaction caused by margin being exhausted because of market going against speculator.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 27, 1899.

SIR: This office is in receipt of your letter of October 26, 1899, in which you ask to be informed as to the tax accruing on transactions

known to stockbrokers as "exhaust contracts," the following being an example of same:

A speculator agrees to buy or sell stock and deposits a certain margin; he receives a memorandum duly stamped at the rate of 2 cents per \$100 or fraction thereof of the par value of the stock. The market goes against the speculator and he decides to forfeit his deposit, and without any other agreement the transaction ends.

You are advised that this office holds that where a speculator in a bucketshop buys or sells stock, receiving therefor a duly stamped memorandum, and deposits a certain margin, which margin, because of the market going against the speculator, is exhausted, and no further agreement to buy or sell is had with reference thereto, and no settlement of differences is made between the parties to the transaction, no further tax accrues on said transaction.

Respectfully, yours, G. W. WILSON, *Commissioner.*

Mr. THOS. F. YOUNG, *Washington, D. C.*

(21709.)

Special tax—Express company.

An express company engaged in the business of buying or selling foreign money or bills of exchange is required to pay special tax as a broker.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 31, 1899.

GENTLEMEN: The committee appointed at the annual meeting of the American Bankers' Association to present to me reasons for a reconsideration of my ruling of March 24, 1899, relieving express companies from the payment of special tax as brokers under the war-revenue act, were given a hearing at this office on the 27th instant, and after a full discussion of the question, submitted your brief on behalf of their association.

I then pointed out to them the fact that there was a misapprehension as to the extent of the ruling referred to, and that it related only to the money-order business of express companies, and held that express companies did not involve themselves in special-tax liability as brokers by reason of carrying on that particular branch of business; and that this had also been stated in my answer of the 20th instant to letters received from bankers in all sections of the country complaining of the effect of the ruling, which answer was made before I had been apprised of the appointment of this committee.

No question was raised by the committee in its argument, nor by you in your brief, as to the correctness of the ruling with reference to sales of money orders by express companies in the form and upon the conditions in which such orders have heretofore been drawn and

issued. As at present advised, therefore, I shall make no change in the ruling relating to this money-order business.

The evidence, however, submitted by the committee of the Bankers' Association as to other transactions of at least one of the express companies, namely, the American Express Company, and its agents throughout the United States, is conclusive (if not hereafter overthrown) in establishing the special-tax liability of this company and these agents as brokers.

The committee called attention to circulars and advertisements of the American Express Company, showing that this company makes it a part of its business "to buy or sell foreign money at any of its agencies in the United States," and that "it is always in the market for the purchase of good foreign bills of exchange." This of itself (leaving aside for the present the other considerations upon which you lay stress in your brief as showing the liability of this company) is sufficient to warrant this office in directing the collectors of internal revenue in the various districts in which the American Express Company and its agents are engaged in the business herein mentioned to report the cases for assessment of the special tax and penalty; and a circular letter has to-day been addressed to collectors instructing them to make such report in their next list.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Messrs. SHEARMAN & STERLING, *New York, N. Y.*

(21711.)

Stamp tax—Stock transactions.

The circumstances under which the memoranda issued by brokers evidencing the sale or purchase of stock need or need not be stamped.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 31, 1899.

SIR: This office is in receipt of your letter of October 16, 1899, relative to the reports of Revenue Agent Trowbridge, under date of September 23, 1899, concerning the failure to properly stamp stock transactions on the part of E. A. Bowers & Co., brokers and commercial brokers, Washington Loan and Trust Building, Washington, D. C.

In this connection you submit affidavit from Mr. Bowers, together with statements of his customers and employees, as well as report of Deputy Collector Day.

Mr. Bowers' affidavit is to the effect that his firm has not sold to or bought from a customer a share of stock; that no sales of stock or

purchases of stock take place in its office; that his firm does not itself execute any customer's order, but, on the contrary, all orders received from customers are transmitted to correspondents in New York, who negotiate and make the trade in New York; that on all trades so negotiated the revenue tax required by law is collected and paid to New York, when the stamps are there duly affixed; that his firm does not deal in stocks, does not buy or sell stocks; and that it acts only as a broker to negotiate trades for others, which trades are all negotiated and made in New York, and in no case in his office in Washington.

The affidavit on the part of some of the customers of E. A. Bowers & Co., as well as that of the employees, is to the same effect.

Deputy Collector Day states that he finds from investigation that the statements made by Mr. Bowers, his employees, and his customers are true, except that Mr. Bowers has omitted to say that in placing the orders of his customers in New York, either for the purchase or sale of stocks, he does not give the name of the customer, and the New York correspondent only knows Mr. Bowers, and whatever stocks that are bought or sold are charged or credited, as the case may be, to the account of Mr. Bowers. * * *

You are advised that this office has carefully reconsidered the question of whether or not two sales are made when a broker wires an order for stock received from a customer to his correspondents located in another city, and now holds that where a broker receives an order to buy or sell stock for a customer and wires said order to his (the broker's) correspondents located in another city, the name of the customer being undisclosed, but one tax accrues on the transaction, and said tax is the one accruing when the sale or purchase is made by the correspondent.

This ruling only applies when in each case the broker can prove to the satisfaction of this office that the stock was not purchased for his own account through his correspondents, but for his customer for whom he acts as agent. When this fact can not be proven, then the broker will be held to be dealing for his own account, and upon each transaction two taxes would accrue, as has been heretofore ruled in Treasury decision 21540 (page 63).

In connection with the above, it is to be understood that when a customer asks his broker to close any transaction, thus completing what is known as the "round turn," a tax again accrues at the rate of 2 cents per \$100, or fraction thereof, of the par value of the stock involved in the transaction.

Any previous rulings inconsistent with the above are hereby modified to conform therewith.

Respectfully, yours,
G. W. WILSON, *Commissioner.*
Mr. B. F. PARLETT, *Collector Internal Revenue, Baltimore, Md.*

(21813.)

Special tax—Broker.

The sheriff, who, as tax collector and treasurer of his county, takes up witness claims and applies them to the payment of the taxes of the witness or holder thereof, is not required to pay special tax therefor as a broker.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 28, 1899.

SIR: In a letter addressed to this office on the 20th instant by the sheriff of Wayne County, W. Va., he submits the question of the special-tax liability of a sheriff as a broker upon the following statement of facts:

Under the laws of the State of West Virginia the claims of witnesses in felony cases are payable out of the State treasury. It has been the practice of the sheriffs of the different counties to take up these witness claims and apply them to the payment of the taxes of the witness or holder thereof. The sheriff is the tax collector and treasurer of his county, and, as such, collects the State tax out of which these witness claims are payable. The sheriff in his settlement with the auditor of the State, for State funds collected, is allowed credit for said witness claims. From this it will be seen that these witness claims are really paid by the sheriff out of the funds upon which they are drawn. The sheriff takes these claims from the witness or holder at their face value, and after applying the same to the payment of taxes aforesaid pays the difference in cash. In many cases this is the only way the sheriff has to secure said taxes and in some instances he is compelled to attach the claim before it is delivered to the witness.

The sheriff is not to be regarded as engaged in the business of a broker within the meaning and intent of the second paragraph of section 2 of the act of June 13, 1898, on account of the transactions thus described.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Mr. A. B. WHITE, *Collector Internal Revenue, Parkersburg, W. Va.*

(12.)

Special tax—Broker.

Where an officer of a bank holds a membership in a stock exchange as agent for his bank, and the business done by him on the stock board is the bank's business, neither he nor his bank is required to pay special tax therefor as a broker, the bank being exempt therefrom by the express provision of the statute defining brokers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 8, 1900.

SIR: Your letter of the 20th ultimo has been received, inclosing a letter from Mr. John V. Clarke, president of the Hibernian Banking

Association, submitting the question whether he or his bank is required to pay special tax as a broker by reason of the fact that he, "as an officer of the bank, and at the request of the board of directors," has "held a membership in the stock exchange for the benefit of the bank." He says:

This membership was paid for by the bank. The annual dues on the same are paid by the bank. It is carried as an asset of the bank; and I hold it as trustee for the bank.

Upon this state of facts you may inform Mr. Clarke that neither he nor the Hibernian Banking Association is required to pay special tax as a broker. The business of a broker transacted by him at the stock exchange is his bank's business, done by the bank through him as its agent; and the requisite special tax having been paid by the Hibernian Banking Association as a bank, it is, under the express provision of the statute, exempt from special tax as a broker for carrying on the business of negotiating purchases or sales of stocks or other securities contemplated by the second paragraph of section 2 of the act of June 13, 1898.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Mr. F. E. COYNE, *Collector First District, Chicago, Ill.*

BROKERS, COMMERCIAL.

(See COMMERCIAL BROKERS.)

CERTIFICATES.

(20551.)

Stamp tax—Certificates of State officers.

Certificates of authority issued to insurance agents by State officers are subject to taxation, and the rate imposed is 10 cents on each certificate.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 16, 1899.

SIR: I have the honor to acknowledge the receipt of your letter of the 12th instant, inclosing a communication from Hon. T. O. Towles, deputy superintendent of insurance of Missouri, Jefferson City, Mo.

Mr. Towles asks for a reconsideration of the ruling of this office in regard to the taxation of certificates of authority issued by State governments to the agents of the several insurance companies or associations.

The ruling of this office is that such certificates of authority are taxable at the rate of 10 cents each, under the clause of Schedule A

of the act of June 13, 1898, which taxes "certificates of any description required by law not otherwise specified in this act." This ruling is based upon an opinion of the honorable Attorney-General dated July 18, 1898, given to the honorable Secretary of State, which is as follows:

The Treasury Department, through the honorable Commissioner of Internal Revenue, has made a ruling, which has been approved by this Department, that papers and instruments executed, made, or issued by officers of the Government of the United States in the discharge of official functions pertaining to the operation of the governmental machinery, and for the use or benefit of the United States, are exempt from tax. In line with this ruling it is held that all checks or drafts made and issued by the disbursing officers of the United States upon Government funds on deposit, in payment of Government obligations or dues, are exempt, and all certificates of officers of the United States given in the discharge of official functions necessary in carrying on the machinery of the Government, are also exempt. The same principle would extend to instruments and papers of whatever character (otherwise subject to tax) executed, made, or issued by officers of the United States Government for governmental purposes.

Where, however, certificates or other instruments are issued by any Department or officer of the Government at the request of private persons solely for private use, a stamp should be affixed. And in answer to your second question you are advised that such stamp should be furnished by the person applying for the certificate or other instrument and for whose use and benefit the same is issued, and should be affixed before the document is delivered.

Under the foregoing opinion, this office has ruled that certificates of copyright and certificates of registry of trade-marks require to be stamped at the expense of the persons desiring them for use.

The advisory opinion of the honorable Attorney-General in regard to this matter will be found on pages 114 and 115 of the Commissioner's Report for 1898. I quote so much thereof as seems pertinent to the case under consideration:

The question of exempted certificates arises in considering the scope of the first proviso in section 17, which reads as follows:

"That it is the intent hereby to exempt from the stamp taxes imposed by this Act such State, county, town, or other municipal corporations in the exercise only of functions strictly belonging to them in their ordinary governmental, taxing, or municipal capacity."

And also in applying the principle of law which has been laid down that the Federal Government can not tax any agent or municipality of a State; in other words, can not tax any Department of a State for any act or process which is a part of the government thereof. This, then, presents the subject in about this form: If the act performed or the certificate issued by the officer in the discharge of an official function is necessary in operating the general machinery of the Government, it is exempt. But if it is an official act performed at the instance of a private individual, or an agent of outside parties, or in serving interests other than those required to carry on the governmental machinery, then it is subject to the tax, provided that the certificate is required by law for any special or general use.

It would, perhaps, be well to illustrate, in order to establish more clearly the distinction. Take, for instance, the officer known as secretary of state. He is required generally in the States to certify laws passed by the legislature. Such a certificate would be exempt, because it is the performance of an act necessary as a part of his general governmental functions.

The secretary of state also, in some States, is required to issue certificates of incorporation to corporated companies and associations. The latter would be subject to the tax, because, whilst it is an official act, it is not such a one as comes within the description above. It is a certificate at the instance of private interests and not public requirements. He is required by law to issue it, but this requirement does not make it taxable. Its liability to taxation accrues because it is such a certificate as is required by law and must be filed in the proper offices of counties wherein the company is doing business.

Under the above opinion, this office has held certificates of incorporation, certificates of authority to insurance agents, and all other certificates issued by State officers that are applied for by private persons at their own instance and for their own use, to be taxable. The test prescribed by the honorable Attorney-General, in his opinion, appears to be, whether the document is furnished at the request of private persons solely for private use. I think there is no doubt that the certificate of authority to insurance agents is furnished at their request and for their own private use.

The State of Missouri is not in the insurance business, and is at perfect liberty to disregard the operations of insurance agents if it so desires. The issue of these certificates is not, therefore, an exercise of a function *strictly* belonging to the State in its ordinary taxing or governmental capacity.

The same arguments used by Mr. Towles would apply just as well to all other certificates required by law, which under certain circumstances it is the duty of the State officers to issue. It must be presumed that Congress did not do a fruitless thing in legislating in this matter, and it is believed that certificates of the nature of those in question are the ones that Congress intended to reach by this legislation. At any rate, such is the decision that the law officers of the Government have arrived at in this matter. Nor, because it is the duty of the insurance commissioner to affix a 10-cent stamp to such certificate of authority, does it follow that the State must pay such tax. The law imposes the duty of affixing the stamp on the person executing and issuing an instrument, but it does not say that such person shall pay for the stamp. As you will observe in the Attorney-General's opinion, the tax must be paid by the party for whose use or benefit the same is issued, which in this case, is the insurance agent.

The citizens of a State are citizens of the United States, and are not exempt from taxation because in the course of their business it becomes necessary for them to procure a certificate of authority from

the State. The certificate is issued at their instance and for their benefit, and they must pay the tax.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Hon. F. M. COCKRELL, *United States Senate, Washington, D. C.*

(20980.)

Stamp tax—Certificates.

Certificates as to use of alcohol withdrawn from bond for scientific purposes under section 3297, Revised Statutes, held to be not subject to stamp tax under act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 3, 1899.

SIR: I am in receipt of your letter of the 30th ultimo, inclosing a 10-cent documentary stamp to be affixed to a certificate recently furnished this office by the Pennsylvania Hospital as to the use of certain alcohol withdrawn from bond by that institution, free of tax, under the provisions of section 3297, Revised Statutes. The certificate, so called, while required by regulations issued pursuant to said section 3297, is in the nature of an affidavit, and is not, in my opinion, a *certificate required by law* within the contemplation of the act of June 13, 1898. The stamp furnished in this case is, therefore, returned.

Respectfully, yours,

G. W. WILSON, *Commissioner.*

Mr. P. A. McCLAIN,

Collector First District, Philadelphia, Pa.

(9.)

Stamp tax—Certificates.

Certificates attached to depositions to be used in legal proceedings not taxable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 8, 1900.

SIR: Under date of the 2d instant this office received a letter from O. G. Eckstein, attorney-at-law, No. 107 South Main street, Wichita, Kans., in which this gentleman asks if notarial certificates attached to depositions of witnesses to be used in cases pending in court require to be stamped in the amount of 10 cents as certificates required by law not specifically mentioned in the act.

Please inform Mr. Eckstein that these certificates are not subject to taxation, no matter in what form they are executed. They are required in a legal proceeding and are exempt from taxation.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. M. W. SUTTON,
Collector Internal Revenue, Leavenworth, Kans.

CHARTER PARTIES.

(21419.)

Stamp tax—Charter party.

The copy or duplicate of a foreign-made charter party, chartering a vessel to load at a port within the United States, which is the original evidence in this country of the vessel's charter and the evidence accepted by all concerned, is subject to taxation.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 21, 1899.

SIR: Your attention is called to the fact that under date of July 12, 1899, this office advised Mr. H. A. Rucker, collector of internal revenue, Atlanta, Ga., that the so-called copy or duplicate of a foreign-made charter party, chartering a vessel to load at a port within the United States, which is the original evidence in this country of the vessel's charter, and the evidence accepted by the master and all concerned, should be stamped under the act of June 13, 1899.

It appears that three, and often more, copies are made of original charter parties. Of these copies, one goes to the master of the vessel, another to the charterer or consignee of the vessel, and one or more to representatives of charterer or consignee for use at port or ports where outward cargo is discharged. As to which one of these copies should be stamped, you are advised that as the master's copy is the original evidence in this country, and the evidence accepted by the master and all concerned of the vessel's charter, it is the copy which preferably should be stamped. If, however, the master's copy is not obtainable, any other copy may be stamped, the revenue law being complied with when any one copy is stamped.

It is suggested that you endeavor to bring this matter to the attention of masters of vessels clearing from your port.

Respectfully, yours, G. W. WILSON, *Commissioner*.
COLLECTOR OF CUSTOMS, *Savannah, Ga.*

(21754.)

Stamp tax—Charter party.

The tax under the head of charter party is based on the *net registered* tonnage, and not on the gross registered tonnage.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., November 9, 1899.

SIR: This office is in receipt of your letter of November 1, 1899, in which you ask to be informed whether, under the paragraph of Schedule A beginning with the words "Charter party," the tax is imposed on the basis of the gross tonnage or on the net tonnage.

You state that the revenue agent of your division has been computing tax against charterers of vessels on the basis of the gross tonnage, and you submit one of a series of letters bearing on this point, received by you from Bennett, Walsh & Co., 18 Broadway, New York, N. Y.

The paragraph of Schedule A referring to charter parties is as follows:

Charter party: Contract or agreement for the charter of any ship, or vessel, or steamer, or any letter, memorandum, or other writing between the captain, master, or owner, or person acting as agent of any ship, or vessel, or steamer, and any other person or persons, for or relating to the charter of such ship, or vessel, or steamer, or any renewal or transfer thereof, if the registered tonnage of such ship, or vessel, or steamer does not exceed three hundred tons, three dollars.

Exceeding three hundred tons and not exceeding six hundred tons, five dollars.

Exceeding six hundred tons, ten dollars.

You are advised that under the act of August 5, 1882, the *net* tonnage of a ship shall be considered the *register* tonnage, and although the customs regulations require both the gross and the net tonnage to be registered, this office holds that the word *registered* as used in the paragraph of Schedule A herein referred to should be construed as referring to the *register* or *net* tonnage, which alone represents the carrying or earning capacity of a vessel, and the tax imposed under the head of charter party should, therefore, be based on the *net tonnage*.

Respectfully, yours,

ROBT. WILLIAMS, JR., *Acting Commissioner.*

MR. C. H. TREAT, *Collector Second District, New York, N. Y.*

CHECKS, DRAFTS, NOTES, ETC.

(See also DECISIONS 20785, p. 54; 20788, p. 36; 20949, p. 89; 20952, p. 95; 21471, p. 209; 21780, p. 212.)

(20648.)

Stamp tax—Checks and orders.

Checks and orders for the payment of money (inland and foreign) defined and tax designated.—Letters of advice used by foreign money brokers, when taxable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 30, 1899.

SIR: This office is in receipt of your letter under date of January 19, 1899, in which you refer to the paragraph under Schedule A relating to the tax imposed on bank checks, drafts, bills of exchange, both inland and foreign, orders for the payment of money, etc., and ask the following questions in regard to the same:

1. Is a check properly defined "an order for the payment of money on demand out of the current funds standing to the credit of the drawer, irrespective of the location of the payor," and subject to a stamp tax of 2 cents each?

Answer. A check may be defined as a draft or order upon a bank or banking house purporting to be drawn upon a deposit of funds for the payment at all events, of a certain sum of money to a certain person therein named, or to him or his order, or to the bearer, and payable instantly on demand. A check must be drawn upon a bank or banker, and requires but a 2-cent stamp affixed thereto under the act of June 13, 1898, irrespective of whether the bank or banker on which the check is drawn is located in the United States or in a foreign country.

2. Is the order for the payment of money (inland) taxable at the rate of 2 cents per \$100, or fractional part thereof, distinguished from a check *only* by the element of *time*?

Answer. An order for the payment of money may be defined as an order upon any person or persons for the payment of a certain sum of money to a certain person therein named, or to him or to his order, or to the bearer. It may or it may not be payable on demand, and may or may not be drawn upon a deposit of funds. If payable at sight or on demand, but a 2-cent stamp is required, but if payable otherwise than at sight or on demand within the United States, stamps at the rate of 2 cents per \$100, or fraction thereof, must be affixed. An order for the payment of money is distinguished from a check by the fact that a check must be drawn on a bank or banker and against a deposit of funds, while an order need not be so drawn.

3. Is the order for the payment of money taxable at the rate of 4 cents per \$100 or fractional part thereof predicated on its being based

on a letter of advice, or upon the fact that it is payable abroad? If the latter, how shall discrimination be made between a check payable abroad and an order referred to in ruling 74, Circular 503, revised?

Answer. An order for the payment of money which is taxable at the rate of 4 cents per \$100 or fractional part thereof is predicated upon the fact that it is payable abroad.

The difference between an order for the payment of money payable abroad and a check payable abroad is the same as is explained in the preceding section.

4. When a certificate of capital stock of a corporation is in the name of a trustee, and upon his death is issued to his successor in trust, is the transfer taxable?

Answer. When a certificate of stock of a corporation stands in the name of a trustee and is upon his death transferred to his successor in trust, no liability to the stamp tax is incurred.

5. In case of a letter of advice to a foreign correspondent for a lump sum covering several money orders, payable to A, B, C, etc., should stamps be affixed at the rate of 4 cents per \$100 on the basis of the total amount, or upon each order treated separately?

Answer. In case of a letter of advice to a foreign correspondent for a lump sum covering several orders, payable to A, B, C, etc., stamps at the rate of 4 per cent per \$100 or fractional part thereof should be affixed on the basis of the total amount named in the letter of advice. This ruling is based upon a case where no bill of exchange or order for the payment of money accompanies the letter of advice. If, however, a bill of exchange or order for the payment of money accompanies the letter of advice, it is these instruments that are taxable, and not the letter of advice.

Respectfully, yours, N. B. SCOTT, *Commissioner*.
Mr. F. E. COYNE, *Collector Internal Revenue, Chicago, Ill.*

(20874.)

Stamp tax—Orders for payment of money.

Orders for the payment of money contained in acceptance of drafts require but one stamp of 2 cents, whether the drafts are at sight or on time.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 15, 1899.

SIR: Referring to the conversation with you yesterday, on your personal visit to this office, relative to the tax on acceptance of drafts considered as orders for the payment of money, I have to advise you that the present ruling of this office is contained in Circular 503, revised, No. 57, and is as follows:

Sight drafts, drawn upon or issued by any bank, trust company, or any person or persons, companies or corporations, require a stamp, and,

if the acceptance of the draft is accompanied by an order to the bank to pay the same, and to charge to the account of the drawee, this accompanying order requires, in addition, a 2-cent stamp as "an order for the payment of money;" and, if a time draft, the accompanying order must be stamped at the rate of 2 cents per \$100.

This ruling will now be modified so that a time draft which has an order accompanying the acceptance for its payment at a particular bank will require only a 2-cent stamp in addition to the stamp already placed thereon, and not 2 cents per \$100. In other words, there will hereafter be no distinction between the acceptance of time drafts and those payable at sight in this respect.

Respectfully, yours,

G. W. WILSON, *Commissioner*.

Mr. CHARLES H. TREAT,

Collector Second District, New York, N. Y.

(20947.)

Stamp tax—Bills of exchange.

Bills of exchange or orders for payment of money drawn abroad, but payable in the United States *at sight or on demand*, require only a 2-cent stamp on each instrument.—Reversal of ruling published as Treasury decision 20881 in this respect.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 31, 1899.

SIR: Referring to your letters of March 23 and 24, 1899, I have to advise you that the ruling of this office in construing section 11, act of June 13, 1898, relative to the tax on bills of exchange and orders for the payment of money drawn abroad, but payable in this country, as made February 1, 1899, is hereby modified as follows:

When any bill of exchange or order for the payment of money, drawn in a foreign country, but payable in this country *otherwise than at sight or on demand*, is presented for acceptance or payment, there must be affixed thereto before acceptance or payment a stamp equal to 2 cents for each \$100, or fractional part thereof, or the same tax as is imposed on inland bills of exchange.

When any bill of exchange or order for the payment of money, drawn in a foreign country, but payable in this country *at sight or on demand*, is presented for payment or acceptance, the stamp required to be affixed is 2 cents only for each such instrument so presented.

Inland bills of exchange *payable at sight or on demand* are not specifically mentioned in the law, and, therefore, it is held that it was the intention of Congress to assimilate sight instruments drawn under section 11 with the other inland papers *drawn at sight or on demand* provided for in paragraph 3 of Schedule A.

Attention is called to the fact that a penalty is imposed by section 11, not only on the person paying such instruments unstamped, but on persons negotiating or offering in payment, or receiving or taking in payment, such unstamped instruments.

Respectfully, yours,

G. W. WILSON, *Commissioner*.

Mr. CHARLES H. TREAT,

Collector Second District, New York, N. Y.

(20985.)

Stamp tax—Receipts.

Receipts accepted in lieu of promissory notes as evidence of money loaned must be stamped as promissory notes.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 8, 1899.

SIR: This office is in receipt of a letter under date of February 13, 1899, from James Clark, president Drivers' and Mechanics' National Bank, Baltimore, Md.

Mr. Clark submits two blanks, one a so-called irrevocable power of attorney and the other a receipt. The two together, he states, are being used by many banks in lieu of collateral notes, with the express intention of evading the tax of 2 cents per \$100 or fraction thereof on promissory notes.

Mr. Clark asks whether he would be permitted to use these papers in making call or demand loans without stamps other than the 25-cent stamp on the so-called power of attorney.

In reference to this question, your attention is called to the following extract from a letter addressed to the Manufacturers' National Bank of Baltimore, Md., under date of March 10, 1899, by the honorable the Comptroller of the Currency, from which it will be seen that, in the opinion of the Comptroller, this method of loaning money is, to say the least, of questionable legality:

Irrespective of the effort to evade the tax law, which action the Comptroller can not sanction, the taking of a receipt for money as evidence of a loan is not considered by him as consistent with conservative banking and business principles. A receipt for money borrowed may, under certain conditions, represent other relations between the bank and the individual than that of lender and borrower. A promissory note is, on its face, complete evidence of the nature of the relation existing between the borrower and the bank, and its legal status is definitely fixed. Receipts have not heretofore been regarded as proper evidence of an obligation for money borrowed, and they can not be so considered by this office in the future.

You will please advise Mr. Clark, therefore, that, in accordance with the above, a receipt is not regarded as a proper evidence of money

borrowed, and if accepted by a lender as such evidence it must be accepted with the evident purpose of evading the tax imposed under the act of June 13, 1898, on promissory notes, and, therefore, this office holds that a receipt used in lieu of a promissory note as evidence of money borrowed must be stamped as a promissory note at the rate of 2 cents per \$100.

The so-called power of attorney is not a power of attorney, but merely an agreement, and is not subject to taxation.

You will please cause an investigation to be made of the banks in Baltimore, and request those banks who have accepted receipts in lieu of promissory notes to make a statement to you under oath of the number used by them unstamped, and report same for assessment to this office.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. B. F. PARLETT, *Collector Internal Revenue, Baltimore, Md.*

(21020.)

Stamp tax—Receipts.

Receipts presented by anyone other than the depositor in person must be stamped.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 12, 1899.

SIR: This office is in receipt of a letter under date of March 31, 1899, from Mr. M. J. Sweeley, Joy Building, Sioux City, Iowa, who writes in reference to the use of unstamped receipts by depositors, which is not in accord with his construction of this office's ruling, that receipts must be presented *in person by depositors* in order to be exempt from taxation.

Mr. Sweeley asks to be advised whether the following forms of receipts, which the country banks are using for the purpose of ordering currency to be sent them by their city correspondents, or for the purpose of transferring a credit from one bank to another, can be used unstamped:

(FORM NO. 1.) NORFOLK, NEBR., *March 14, 1899.*

Received of Sioux City State Bank five thousand dollars (\$5,000), for my personal use, in currency.

JOHN SMITH, *Cashier.*

(FORM NO. 2.) NORFOLK, NEBR., *March 14, 1899.*

Received of Sioux City State Bank five thousand dollars (\$5,000), for my personal use, for credit with the Chase National Bank of New York.

JOHN SMITH, *Cashier.*

You will please advise Mr. Sweeley that a receipt must be presented personally by a depositor in order to be exempt from taxation. If

sent by mail or through a third party it must be stamped. Therefore any receipt used for the withdrawal of funds standing to the credit of a depositor must be stamped *unless presented in person by the depositor at the bank* from which the money is to be withdrawn.

You will also please notify all banks and bankers in your district in accordance with the above, and inform them that the acceptance of unstamped receipts, when not presented in person by the depositor, makes them liable to the penalty imposed in section 10 of the act of June 13, 1898.

Respectfully, yours,

G. W. WILSON, *Commissioner.*

Mr. J. W. PATTERSON,

Collector Internal Revenue, Dubuque, Iowa.

(21021.)

Stamp tax—Checks, drafts, etc.

Tax on checks, drafts, or orders for the payment of money, domestic and foreign, and definition of such instruments.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 12, 1899.

SIR: This office is in receipt of your letter, under date of April 7, 1899, inclosing letter from Messrs. Bolognesi, Hartfield & Co., 29 Wall street, New York City, who write in reference to the stamping of sight and time drafts drawn in this country and payable abroad, and drafts drawn abroad but payable in this country, and also as to why their agents in the United States are obliged to pay the special tax as brokers, while express companies, who advertise the sale of drafts, etc., and conduct a business similar to these agents, are not required to pay such tax.

Messrs. Bolognesi, Hartfield & Co. do not, it appears, discriminate between sight and time drafts and checks. You will please advise these gentlemen as follows:

A *check* may be defined as an order, payable on demand, drawn on a bank or banker against a deposit of funds; and a check, under the act of June 13, 1898, requires but a 2-cent stamp whether drawn in and payable in this country or drawn in this country and payable abroad, or drawn abroad and payable in this country.

A *draft* may be defined as an order for the payment of money drawn by one person on another. It differs from a check in that it may or may not be drawn on a bank or banker, may or may not be payable on demand, and may or may not be drawn against a deposit of funds.

Drafts, under the act of June 13, 1898, are taxable as follows:

Drafts drawn in and payable in this country, at sight or on demand, 2 cents.

Drafts drawn abroad, but payable in this country, at sight or on demand, 2 cents.

Drafts drawn in this country, but payable abroad, at sight or on demand, 4 cents per \$100, or fraction thereof.

Drafts drawn in and payable in this country, or drawn abroad and payable in this country, otherwise than at sight or on demand, 2 cents per \$100, or fraction thereof.

Drafts drawn in this country, but payable abroad, otherwise than at sight or on demand, 4 cents per \$100, or fraction thereof.

The tax imposed on drafts under the act of June 13, 1898, as above described, applies to all orders for the payment of money drawn singly, with the exception of checks which have been hereinbefore described.

In reference to the question of whether the agents in the United States of Messrs. Bolognesi, Hartfield & Co. are liable to the special tax as brokers, you are referred to Treasury decision No. 20919 (page 56).

Respectfully, yours, G. W. WILSON, *Commissioner*.

Mr. CHAS. H. TREAT, *Collector Second District, New York, N. Y.*

(21077.)

Stamp tax—Orders for payment of money.

Orders for payment of money by officers of lodges or beneficiary societies.—Modification of ruling 58 in circular 503, revised.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 1, 1899.

SIR: This office is in receipt of your letter under date of April 18, 1899, stating that you are the treasurer of a Masonic lodge and other Masonic bodies; that you keep your account with the First National Bank, and have instructed the cashier of said bank to pay the orders upon you as treasurer and charge same to your treasurer account, and you ask to be advised whether these orders when cashed by the bank and charged to your account require to be stamped.

You are advised that an order for the payment of money, drawn by one officer of a lodge or society on the treasurer thereof, does not require to be stamped if presented for payment directly to the treasurer by the party in whose favor said order is drawn, but if the order is cashed by a bank or otherwise negotiated and presented to the treasurer for payment by a party other than the one in whose favor it was originally drawn, it requires a 2-cent stamp. Therefore, the

orders drawn on you as a treasurer of a lodge, if cashed by the bank and charged to your account as treasurer, require a 2-cent stamp. * * *

Respectfully, yours, G. W. WILSON, *Commissioner.*
Mr. L. T. WILCOX,
Cashier Three Rivers National Bank, Three Rivers, Mich.

(21395.)

Stamp tax—Checks.

Banks must not affix stamps to unstamped checks presented, and must return to drawer any unstamped check presented for payment. Contrary instruction contained in Treasury decision 19606¹ revoked.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 14, 1899.

SIR: This office is in receipt of your letter of July 6, 1899, stating that it has come to your knowledge that certain banks are encouraging a practice of allowing their customers to give checks without stamping same, and when the checks are brought to the bank the bank stamps them. As the check is delivered to the payee before it reaches the bank, in your opinion, such a practice is illegal and a violation of the revenue law; also, you state that many of the checks never reach the bank upon which they are drawn, being taken up before being presented for payment, and the Government would, therefore, lose entirely the amount of the stamp in that particular case. You also state that the bank has adopted this practice as an advertisement to secure patronage as against a rival bank which requires the customers to stamp their checks at the time they are executed. You ask to be advised in the matter.

You are advised that *banks must not affix stamps to unstamped checks presented*, and must return to the drawer any unstamped check presented for payment.

You are directed to notify the banks that are guilty of the practice herein described that if it is not immediately discontinued they will be reported to the United States district attorney for prosecution.

The instruction contained in Treasury decision 19606,¹ under date of June 29, 1898, to the effect that there was no objection to the affixing by the bank of the requisite stamps to an unstamped check presented for payment, is hereby revoked. This instruction was given to meet an emergency immediately preceding the taking effect of the stamp act on July 1, 1898, in order to obviate the necessity of returning by

¹Compilation of Decisions Rendered by the Commissioner of Internal Revenue under the War-Revenue Act of June 13, 1898 (January, 1899), page 91.

the banks thousands of unstamped checks issued by drawers in ignorance of the law. The law being now generally understood, there is no further need of such permission.

Respectfully, yours,

G. W. WILSON, *Commissioner*.

Mr. JOHN C. ENTREKIN,

Collector Eleventh District, Chillicothe, Ohio.

(21708.)

Stamp tax—Grain and cotton tickets.

Grain and cotton tickets cashed by a regular employee of company issuing same, or from buyer's own money in hands of third parties, not taxable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., October 30, 1899.

SIR: I have the honor to acknowledge receipt of your letter of October 18, 1899, in which you call attention to Treasury decisions 20239¹ and 20375,¹ and ask to be informed whether under the above decisions it is lawful for parties not in the banking business to take deposits from buyers of produce and pay their tickets without attaching revenue stamps to the weigh bills or orders, when banks who have paid their license are prohibited from doing the same thing without the stamp being attached to the ticket or order.

I have to advise you that grain and cotton tickets and the like may be cashed by a regular employee of the company issuing same, and directly to the parties to whom they are issued, without liability to the stamp tax, and they may also be cashed by a person not a regular employee of the company issuing same, provided the company deposits money with said person for the specific purpose of cashing these tickets, and providing the tickets are cashed out of the buyer's own money and no other.

Under the above ruling a bank would be allowed to cash grain or cotton tickets without requiring stamp on said tickets, providing the party issuing the tickets deposits funds with the bank for the specific purpose of paying these tickets, which funds the bank must keep separate and distinct from its general deposit funds, and providing the tickets are paid directly to the parties to whom they were originally issued. It must be understood that the funds so deposited are for the specific purpose of cashing grain or cotton tickets and the like, and for no other purpose.

Any previous ruling inconsistent with the above is hereby modified to conform therewith.

Respectfully, yours,

G. W. WILSON, *Commissioner*.

Hon. J. W. BABCOCK, *Necedah, Wis.*

¹ Compilation of Decisions Rendered by the Commissioner of Internal Revenue under the War-Revenue Act of June 13, 1898 (January, 1899), pages 107 and 108.

(21815.)

Stamp tax—Promissory notes.

Promissory notes under seal taxable same as other promissory notes, and not as bonds.—Treasury decision 21891 revoked.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 4, 1899.

SIR: In reply to your letter of the 8th ultimo, with reference to the taxation of a judgment note under seal, an instrument in common use in your State, which this office ruled under date of October 24, 1899, was taxable as a bond in addition to a tax as power of attorney, I have to advise you that I have carefully reconsidered the ground of that ruling, with the following result:

The instrument in question is as follows:

§ ——— ———, 189—. ——— after date ——— promise to pay to the order of ——— ——— dollars, without defalcation, value received, with interest.

And further ——— do hereby empower any attorney of any court of record, within the United States or elsewhere, to appear for ——— and, after one or more defalcations filed, confess judgment against ——— ——— as of any term for the above sum, with costs of suit and attorney's commission of ——— per cent, for collection, and release of all errors, and without stay of execution, and inquisition and extension upon any levy on real estate is hereby waived, and condemnation agreed to, and the exemption of personal property from levy and sale on any execution hereon is also hereby expressly waived, and no benefit of exemption be claimed under and by virtue of any exemption law now in force or which may be hereafter passed.

Witness ——— hand- and seal-.

No. ———.

———. [L. s.]
———. [L. s.]

This document contains, in addition to a promise to pay, a power of attorney and a waiver of exemption rights on execution. The whole paper is usually called a judgment note, and sometimes a single bill or bill obligatory.

It is said by Daniel on Negotiable Instruments (vol. 1, p. 28) that "if a seal be affixed to a paper in the ordinary form of a note its character as such is destroyed; it is thereby converted into the deed or bond of the maker who is then termed the obligor;" and Bouvier's Law Dictionary defines a bill obligatory as "a bond absolute for the payment of money." This was undoubtedly so at common law; but it is believed that the strictness of this doctrine has yielded to commercial usage, and it is no longer common to regard a promissory note under seal as a bond. Under the act of July 1, 1862, this office ruled that a bill single or a bill obligatory—*i. e.*, an instrument in the form of a promissory note *under seal*—was taxable at the same rate as other promissory notes, and, after a review of all the facts, I have arrived at the conclusion that it was not the intention of the law-

makers to tax promissory notes under seal other than as ordinary promissory notes not under seal, and it is so ruled.

The above instrument is, therefore, taxable at the rate of 2 cents for each \$100 or fractional part thereof, and in addition thereto requires a 25-cent stamp for the power of attorney embodied therein.

Ruling contained in Treasury decision 21691 to the contrary is hereby revoked.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. P. A. MCCLAIN, *Collector First District, Philadelphia, Pa.*

(3.)

Stamp-tax orders for the payment of money.

Orders for the payment of money are required to be stamped, although intended merely as receipts or vouchers.—The drawer of the order is liable for the stamp, but, besides this, the maker, or party for whose use or benefit the order shall be made, signed, or issued, is liable also.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 30, 1899.

To collectors of internal revenue and others:

The appended decision of the United States circuit court, district of South Carolina, is published for the information of all concerned.

G. W. WILSON, *Commissioner*.

THE UNITED STATES OF AMERICA—DISTRICT OF SOUTH CAROLINA—IN
THE CIRCUIT COURT, FOURTH CIRCUIT.

The Granby Mercantile Company v. E. A. Webster, as collector of internal revenue for the district of South Carolina.

The question presented in this case, lying as it does in a very narrow compass, is nevertheless important.

The Granby Mercantile Company had an understanding with the Granby Mills, whether put into formal contract or not does not appear. Under this contract or understanding the mercantile company sold goods to the operatives of the mills on credit. When the accounts for such sales were presented to the treasurer of the mills they were paid out of the moneys due to the operatives making them, for wages in the mills, the mercantile company guaranteeing the mills company the correctness of the several accounts. To protect itself, and as vouchers for each transaction, the mercantile company at each sale took from the purchaser an order in this form:

COLUMBIA, S. C., ____.

GRANBY COTTON MILLS, pay to the Granby Mercantile Company
_____ dollars _____ cents, for my account.

Witness: _____.

The Granby Mercantile Company never presented these orders to the mills, but filed them away as vouchers, probably to be presented in case the maker disputed the account.

The collector of internal revenue, discovering this mode of dealing, called upon the Granby Mercantile Company to affix the 2-cent revenue stamp upon each of these orders. He insisted upon this demand, and the Commissioner of Internal Revenue, upon an appeal to him, sustained the decision of the collector. The mercantile company paid the demand, 2 cents upon 15,847 orders, in all \$316.94, and now brings suit for its repayment. (Section 3226, Revised Statutes of the United States.)

The collector proceeded under section 6 of the act of Congress approved June 13, 1898, entitled "An Act to provide ways and means to meet war expenditures, and for other purposes," passed in second session Fifty-fifth Congress. The section is in these words:

"That on and after the first day of July, eighteen hundred and ninety-eight, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this act, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons, or party who shall make, sign, or issue the same, or for whose use and benefit the same shall be made, signed, or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule."

Schedule A, referred to in this section, requires a stamp of 2 cents on "bank check, draft, or certificate of deposit not drawing interest, or order for the payment of any sum of money, drawn upon or issued by any bank, trust company, or any person or persons, companies, or corporations at sight or on demand."

The collector requires a stamp upon instruments referred to in the case at bar because they are orders for the payment of money. There can be no doubt that they are orders for the payment of money and nothing else. The language used can have no other interpretation. The plaintiff, however, says that whatever may be their form, they were not intended for presentation, were never, in fact, presented, but were taken, kept, and filed by the mercantile company as vouchers for each sale.

The case of *United States v. Isham* (17 Wall., 496) says:

"The liability of an instrument to a stamp, as well as the amount of such duty, is determined by the form and face of the instrument, and can not be affected by proof of facts outside the instrument itself."

And this rule commends itself. Were it necessary to inquire into all the circumstances attending the execution of an order for the payment of money, before it can be ascertained whether it be liable to the stamp tax, endless delay would be occasioned. The purpose of the tax—the prompt relief of the Treasury—would be defeated.

The important question, however, is this: Who is liable for the stamp? The drawer of the order unquestionably is. He comes within the words of the act, being the person "who makes, signs, or issues" the order. But, besides this, the payment must be made by the maker or by the party "for whose use or benefit the order shall be made, signed, or issued."

In the case at bar, "for whose use or benefit" were these orders

made or signed or issued? The transaction is this: The operative makes the purchase. He can not, or does not desire to, pay cash. But the mercantile company is unwilling, or at least does not intend, to rely on the personal credit of the operative. It takes from him an order on the mills company payable out of the account of the operative with the mills company. That is the security which the mercantile company takes, and it is taken for its benefit. Whether it be presented then, or is kept for presentation at some time in the future if needed, or whether it be retained simply as a voucher, a verification of the account, it is taken for the use of the mercantile company. So that company comes within the words of the statute. It can not be said that these words "or for whose use or benefit the same shall be made, signed, or issued" apply to the drawer of the order. If this were so, the words quoted would be entirely superfluous, mere surplusage, nor would the disjunctive "or" have been used to connect these words with the words preceding.

This seems conclusive of the question. Let an order be taken dismissing the complaint.

CHARLES H. SIMONTON, *Circuit Judge.*

DECEMBER 27, 1899.

CIGARS.

(See TOBACCO, CIGARS, AND SNUFF.)

COLLATERAL SECURITIES, PLEDGING OF.

(See also DECISIONS 21152, p. 12; 21497, p. 277.)

(20949.)

Stamp tax—Note secured by pledge.

Stamping of a note secured by a pledge of collateral under amendment approved February 28, 1899, to the act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 1, 1899.

SIR: This office is in receipt of your letter of March 16, 1899, submitting form of collateral note, and asking how same should be stamped.

You are advised that the form of note submitted by you, if signed and delivered subsequent to July 1, 1898, but prior to February 28, 1899, is subject to taxation at the rate of 2 cents per \$100 or fraction thereof of the face value as a promissory note, and, in addition, inasmuch as specific collateral is pledged for the payment of a certain and definite sum, stamps should be affixed because of the pledge of collateral embodied therein at the rate of 25 cents for each \$500 in excess of \$1,000 of the amount secured.

In the event of an instrument of this character being signed and delivered subsequent to February 27, 1899, then the following amendment to the act of June 13, 1898, must be taken into consideration:

Whenever any bond or note shall be secured by a mortgage or deed of trust but one stamp shall be required to be placed upon such papers: *Provided*, That the stamp tax placed thereon shall be the highest rate required for such instruments or either of them.

Under this amendment, therefore, an instrument similar in form to the one submitted should be stamped as follows: If for an amount up to \$1,000, as a promissory note only; if for an amount in excess of \$1,000, but not exceeding \$1,200, as a pledge only; if for an amount in excess of \$1,200, but not exceeding \$1,500, as a promissory note only; if for an amount exceeding \$1,500, as a pledge only.

Respectfully, yours, G. W. WILSON, *Commissioner*.

Mr. J. H. INGWERSEN,

Cashier People's Trust and Savings Bank, Clinton, Ohio.

(21044.)

Stamp tax—Pledge of collateral.

Collateral deposited as security for a credit for \$10,000 on open account is subject to taxation as a pledge, and but one tax on the original pledge, no matter how many times the loan is borrowed and paid.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 19, 1899.

SIR: This office is in receipt of your letters of April 8 and April 11, 1899, in reference to the following question submitted by C. B. Richard & Co., 61 Broadway, New York City:

A customer deposits, as collateral security, under verbal agreement, a warehouse receipt for merchandise represented to be worth \$13,000. The customer is permitted to draw against this collateral up to \$10,000. The various amounts drawn are charged to the customer on open account, and he is credited in the same manner with the amounts paid. The indebtedness, therefore, varies daily.

You state that you have informed Messrs. C. B. Richard & Co. that a tax was imposed, under the circumstances above recited, of 2 cents per \$100 or fraction thereof on the \$10,000, and if at any time the \$10,000 was paid, but the collateral not withdrawn and a new credit opened, a new transaction was involved and the tax of 2 cents per \$100 would be again required on whatever the amount of the loan might be.

You are advised that your ruling is not in accordance with the rulings heretofore made by this office in similar cases, as the warehouse

receipt is subject to taxation as a pledge, being pledged as security for a sum not to exceed \$10,000; and under the amendment, approved February 28, 1899, to the act of June 13, 1898, relating to a note or bond secured by a mortgage, the warehouse receipt should have stamps affixed to the amount of \$4.50 as a pledge, and the note, if any, does not require stamps.

As long as the original collateral remains pledged as security for a credit of \$10,000, there is but the one tax on the pledge, no matter how many times the \$10,000, or any part thereof, may be borrowed and paid. Should, however, any other collateral be substituted for the warehouse receipt, the collateral so substituted must be stamped as a pledge.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. CHARLES H. TREAT,
Collector Second District, New York, N. Y.

COMMERCIAL BROKERS.

(See also DECISIONS 20542, p. 45; 20603, p. 48; 20723, p. 11; 21607, p. 64.)

(20592.)

Special tax—Commercial broker.

Leaf tobacco dealers, who are also engaged in the business of negotiating the purchase of tobacco as agents for others, on commission, are commercial brokers under the fourth paragraph of section 2 of the war-revenue act.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 19, 1899.

SIR: Revenue Agent Gates, in a report made to this office concerning T. H. Puryear & Co., dealers in leaf tobacco, Paducah, says:

This firm does a tobacco brokerage business as follows: They maintain an office in Paducah, where they receive orders from purchasers of tobacco, these purchasers being manufacturers, leaf dealers, and exporters of leaf tobacco. They attend regularly the sales made by warehousemen at public auction, and buy on commission for manufacturers, dealers, or exporters. The tobacco bought by them remains in warehouse until the purchaser desires it shipped, when Puryear & Co. pay for it, and it is consigned to the purchaser.

It appears from this statement that Puryear & Co. are acting for others in negotiating the purchase of merchandise (tobacco) for which they receive a commission. If so, they are commercial brokers as defined by paragraph 4 of section 2 of the act of June 13, 1898, and are required to pay special tax accordingly. You will please so inform Puryear & Co., and report the case in your next list for assessment.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner*.
Mr. E. T. FRANKS, *Collector Second District, Owensboro, Ky.*

(20718.)

Special tax—Commercial broker.

Persons engaged in selling passage tickets for steamship lines are not required to pay special tax as commercial brokers, under the fourth paragraph of section 2 of the war-revenue act, on account of such business.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 14, 1899.

SIR: Your letter of the 4th instant has been received, submitting the question whether brokers, railroad ticket agents, or persons in any other business, who sell passage tickets for any of the steamship lines, are considered commercial brokers and are subject to special tax under the fourth paragraph of section 2 of the act of June 13, 1898, "as negotiators of 'other business for owners of vessels.'" You are hereby advised in the negative.

The business of selling passage tickets is, in the opinion of this office, not the other business contemplated by paragraph 4 of that section, with reference to the negotiation of "freight and other business for the owners of vessels, or for the shippers or consignors or consignees of freight carried by vessels."

Respectfully, yours, N. B. SCOTT, *Commissioner.*
Mr. J. C. P. KINCAID, *Revenue Agent, New Orleans, La.*

CONVEYANCES.

(See also MORTGAGES.)

(20636.)

Stamp tax—Deeds for church pews.

Deeds for pews in churches in States where, by statute, pews are made personal property are not required to be stamped under act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 26, 1899.

SIR: Mr. Charles P. Searle, attorney and counselor, Boston, wrote to this office on the 17th instant, also on the 27th of December, 1898, asking whether deeds for pews in Emmanuel Church, a religious society in the city of Boston, are subject to stamp tax. He furnishes a blank form of instrument whereby said church, in consideration of a sum of money, grants the right of use and occupancy of a certain pew for the public worship of God, and for no other use or purpose whatsoever.

In regard to this question, it appears that in some States pews in churches are declared by statute to be real estate, and in other States personal estate. The right to their use and occupancy is by some writers termed an easement. (Washburn on Easements, 515; 1 Washburn on Real Property, 9.) There is a close analogy between a pew right and the right of burial in a public burying ground or cemetery. The interest which a pewholder has in his pew is held by English courts to be of an incorporeal nature only. It is in the nature of an easement, and the holder of the pew or seat is not deemed the owner of so much of the site of a church as is comprised within the area of such pew or seat. It has been held that a pewholder's right is only a right to occupy his pew during public worship.

It appears that pews in Boston have always been held to be personal estate (Attorney-General *v.* Federal Street Meeting House, 3 Gray, 45), and that pews in churches of public worship throughout the State of Massachusetts are made personal property by statute. (American and English Encyclopædia of Law, vol. 18, p. 414, *et seq.*)

Please inform Mr. Searle that this office holds that the instrument in question is not a deed or conveyance requiring a stamp under the act of June 13, 1898.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. JAMES D. GILL, *Collector Third District, Boston, Mass.*

(20792.)

Stamp tax—Partition deeds.

When a partition deed is operative in defining boundary lines or in showing by location each tenant in common's interest, no tax accrues.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 6, 1899.

SIR: This office is in receipt of your letter of February 27, 1899, in which you desire a ruling on the following question:

A and B own 80 acres of land jointly, and desire to divide it, each to take 40 acres by metes and bounds. When executing these deeds from each other, are they required to be stamped?

In reply, you are informed that these deeds are not subject to taxation. They do not vest title; title is already vested, and these deeds operate more in the nature of defining the boundary lines of each owner's property.

Respectfully, yours,

G. W. WILSON, *Commissioner*

Mr. G. P. WALDORF, *Collector Tenth District, Toledo, Ohio.*

(20794.)

Stamp tax—Referee's deed.

The referee, in foreclosure proceedings, required to affix an internal-revenue stamp to the referee's deed delivered to the purchaser.—Decision of the New York supreme court.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 7, 1899.

SIR: I have to acknowledge the receipt of your communication of the 3d instant, inclosing copy of the decision of the New York supreme court, New York County, in the case of Williamanna Loring, plaintiff, v. Ella Irwin Chase, defendant, relative to stamping a referee's deed.

Respectfully, yours,

G. W. WILSON, *Commissioner.*

Mr. CHAS. H. TREAT, *Collector Second District, New York, N. Y.*

[Extract from the decision referred to, which is published for the information of collectors and others.]

SUPREME COURT, NEW YORK COUNTY—SPECIAL TERM, JANUARY, 1899.

Williamanna Loring, plaintiff, against Ella Irwin Chase, defendant.

Motion for the reargument and granting of a previous motion made by Edmund Luis Mooney and Andrew J. Shipman, purchasers of certain property sold under foreclosure in the above action, to compel the referee in foreclosure to affix the proper internal-revenue stamps to the referee's deed delivered to the purchasers.

* * * * *

A purchaser at a judicial sale is entitled to receive a deed which, so far as such a deed can be, will be a defense to his title in any tribunal in which it may be attacked or he may be called upon to assert it. He may be so called upon in a Federal court, and then his unstamped deed would be valueless as evidence. There is, however, another and a broader reason why the referee should be required to stamp his deed. He is an officer of the court, acting under its directions as its own. No question is made as to the power of the Federal Congress to lay an excise tax upon the business transaction of communities and to collect that tax by means of stamps to be placed upon the written instruments exchanged between contracting parties (*Moore v. Moore*), and it is the duty of every citizen to observe this law which imposes such a tax—a duty the violation of which is, under the Federal statute, a misdemeanor. It would be unseemly, at the very least, for this court, which is created for the enforcement and administration of law, to set an example of lawbreaking by directing its officer, acting under its authority, to disobey a valid Federal statute and himself become a misdemeanant.

The motion to direct the referee, as a part of the expenses of the sale, to purchase and affix to his deed the proper internal-revenue stamps is granted, but without costs.

(20952.)

Stamp tax—Masters' deeds.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 4, 1899.

To collectors and other officers of internal revenue:

Attention is called to the appended decision of the United States circuit court in regard to stamping masters' deeds.

G. W. WILSON, *Commissioner.*

FARMERS' LOAN AND TRUST COMPANY v. COUNCIL BLUFFS GAS AND ELECTRIC
LIGHT COMPANY.

(Circuit Court, S. D. Iowa, W. D. December 22, 1898. No. 387.)

1. INTERNAL REVENUE STAMPS—DEED BY MASTER.

The fact that a conveyance is made by a master commissioner under a decree of foreclosure in which the priority of liens is considered and settled, and after competitive sale, does not affect the requirement that the instrument, being a "conveyance of realty," under Schedule A of the revenue law (Laws 55th Cong., 2d sess., c. 448), shall have the required revenue stamps affixed, to be receivable for record.

2. SAME—EXEMPTIONS.

The exemption of checks, drawn by the clerk of the district court on funds held by the court, from the requirement as to revenue stamps, can not be extended to a deed executed by the master commissioner, although the property conveyed in the deed has been in the hands of a receiver under the order and direction of the court.

3. SAME—EXPENSES.

The revenue stamps required to be affixed to a conveyance of realty may be paid for, as expenses, out of the funds in the hands of the receiver, when the conveyance is by a master under decree and sale.

WOOLSON, district judge:

The facts leading to the rule herein issued are as follows: Upon application, duly presented, this court appointed a receiver in foreclosure proceedings herein pending at the instance of the trustee in the matter of a trust deed given by the Council Bluffs Gas and Electric Light Company upon the property and plant of said company, situated in said city of Council Bluffs. Decree was entered ordering sale of said plant and property, and the matter proceeded to sale, the report of sale of the master commissioner was confirmed, and deed ordered thereon. The bid was about \$288,000. Upon presentation to him, to be recorded, of the master's said deed, the county recorder of Pottawattamie County, Iowa, refused to accept same, or to file same for record, for the reason, as assigned by him, that such deed did not have affixed thereto the revenue stamps required by the internal revenue statute relating thereto. On application of said master and the grantee in said master's deed, a rule pro forma was issued on said county recorder to show cause why he should not file and record said master's deed without the same having affixed thereto such revenue stamps. The recorder has made his return, stating that under the provisions of the statute relating to internal revenue, the master's deed, being an instrument whereby realty, etc., is granted and trans-

ferred, can not by him be filed or recorded until the same has affixed thereto revenue stamps to the amount as in said statute provided, and that he now is, and always has been, ready and willing to file and record said deed when thus duly stamped in accordance with said statute. The statute above referred to is chapter 448, Laws 55th Cong., 2d sess., and is found on page 448 of the statutes of that session. Section 15 (page 455) is as follows:

"Sec. 15. That it shall not be lawful to record or register any instrument, paper or document required by law to be stamped unless a stamp or stamps of the proper amount shall have been affixed and cancelled in the manner prescribed by law; and the record, registry or transfer of any such instruments upon which the proper stamp or stamps aforesaid shall not have been affixed or cancelled as aforesaid shall not be used in evidence."

Under Schedule A is given (page 460) the following, as to the amount of stamps required on conveyances:

"Conveyance: Deed, instrument or writing, whereby any lands, tenements or other realty sold shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her or their direction, when the consideration or value exceeds one hundred dollars and does not exceed five hundred dollars, fifty cents; and for each additional five hundred dollars or fractional part thereof in excess of five hundred dollars, fifty cents."

There appears in the statute no provision expressly exempting masters' deeds from the requirements as to stamping conveyances. That the master's deed above described is a "writing, whereby * * * realty sold" is granted and transferred to the purchaser, is conceded. But it is claimed that said deed is exempt from the provisions of this statute, because the same conveys property which was at the date of such conveyance in the possession and control of this court (that is, the receiver of this court), and said deed is, by order of this court, made by one of its officers, viz, the standing master in chancery, and that, therefore, this statute, in so far as it requires that revenue stamps shall be affixed to said deed, is obstructing the administration of justice, and can not be upheld. If taken in its full meaning, the position here assumed, against the application to the present case of the statute just quoted, would make wholly unnecessary the stamping of sheriffs' and marshals' deeds, as well as those of masters and commissioners appointed by the court. I can scarcely believe that Congress intended such deeds should be thus exempt, and I strongly hesitate to adopt a construction which must effect such a result, and such a loss of revenue. The contention extends further, and to the effect that since this statute has been held not to apply, as to its requirements as to stamping checks, to checks drawn by the clerk of this court upon money in the registry of the court, the same construction must apply to deeds made, under the order of the court, by one of its officers. In my judgment, this latter contention is not well founded. When money is paid into the registry of the court, the person so paying the same has thereafter no title or claim to such money, save as the order of court may subsequently otherwise determine. The possession and right of possession is in the court, or its officer, receiving such money. It is held for the benefit of such persons as may be found entitled thereto. And the practice and rules of the court require that it shall

be paid out only on the order of the court, which is in part, at least, evidenced by the countersigning of the check by the judge. This order is, in effect, the paying out by the court of money or funds held by the court. Not so, however, as to lands upon which the decree of the court operates. The title to the land remains in the grantor in the trust deed until such title passes by means of the master's deed. Neither the court, nor its master in chancery, in any true sense, has such title. The deed of the master, under the decree, is merely the instrument which the law uses to pass the title from the grantor in the trust deed to the purchaser at the sale. Save as the decree may operate to divest liens and the like, the master's deed passes no greater title than would have passed had such grantor himself made such conveyance directly to such purchaser. And if, in the latter case, the statute validly requires that the conveyance be properly stamped, it would seem that the master's deed, accomplishing the same purpose, must be stamped, unless very strong grounds are shown to the contrary. That Congress had the constitutional right to enact the statute in its general provisions was conceded on the argument. The cases cited by counsel, under former statutes, relating to the affixing of revenue stamps, are not found to be applicable here. The cases so cited relate to processes of court, and like proceedings. In this respect a manifest difference exists between the facts involved in the former and those in the present statute. In the present case the instrument is a writing conveying realty—transferring title. The Iowa case cited (*City of Muscatine v. Sterneman*, 30 Iowa, 526) related to the stamping of a bond. And the statute was there upheld. Under the present statute the duty of placing stamps on a conveyance appears to be upon the grantor. (See section 9.) If the United States were grantor, there would be strong reason for holding that the act did not contemplate that the Government should be required to thus stamp its own conveyance. But, as we have seen, the deed in question is not a conveyance by the Government. It does not purport to, nor does it, convey any title, interest, or right held by the Government. It only conveys the title and interest of the grantor in the trust deed. The sale and conveyance are not for the benefit of the Government, but for the benefit of the grantees in the trust deed, and, if not of them, then surely of the purchaser at the master's sale. If A files in this court his bill to compel B to perform his contract to convey certain realty, and the suit progresses to decree sustaining the bill, and in accordance therewith B executes his conveyance of the realty, I understand counsel to concede that B's deed under the statute in question must be properly stamped. But if B does not himself execute the conveyance, as required by the decree, and the master named in the decree executes the conveyance, it does not appear why this deed from the master should not be stamped. The master's deed simply conveys the same right and interest which would have passed by the deed of B. Wherein does the application of this statute materially differ in the case just considered from its application to the case at bar? Here, also, the right and interest passed by the master's deed would have passed by a deed directly from the grantor in the trust deed. That the sale was made through a public sale, with competitive bidding, does not affect the matter under consideration; nor that in the progress of the foreclosure proceeding the priority of liens against the realty was considered and settled. Nor is the application of the statute affected by the fact that a receiver, under order of the

court, had been operating and conserving the property. While thus being operated by the receiver, the title to the property remained in the grantor in the trust deed, until divested by the deed of the master. That a large amount of stamps is required under the statute does not change the rule to be applied. The underlying principle is the same, whether the revenue stamps are of large or small amount. If such stamps are required to be affixed to the deed, why may not their amounts be properly treated as part of the costs or expenses of the proceeding? What substantial difference, as to being properly costs or expenses, exists between such stamps and the expense of publishing notice of sale, or the like? The law requires publication of such notice. The expense is taxed as costs or expense of sale. And if the evidence of the sale—the deed—either in its drafting, execution, or stamping, is attended with expense reasonable in amount, why may not this be properly treated as a like expense? That the amount of stamps is reasonable we may not question, because the statute fixes such amount. Why may it not be thus treated, and paid as expenses?

Since the submission of the question involved herein, my attention has been called to a decision made by the Commissioner of Internal Revenue (2 Treasury Dec., p. 864), of date November 17, 1898, wherein it is announced that "deeds of masters in chancery are required to be stamped." It thus appears that the conclusion hereinbefore reached is in accord with the construction and practice adopted by the Treasury Department.

In the present case the payment for the stamps required for the master's deed can be, if necessary, taken from the funds now in the receiver's hands, which have been earned by the property pending foreclosure and sale herein. The rule upon the county recorder of Pottawattamie County, Iowa, must be discharged, and is so ordered.

(20986.)

Stamp tax—Mining deeds.

Conveyance of a mine located on unpatented land is subject to taxation.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 10, 1899.

SIR: I have to acknowledge the receipt of your letter of March 28, inclosing letter of Mr. C. S. Voorhees, of Spokane, Wash., who raises the question whether the conveyance of a mine located on unpatented land is liable to tax under Schedule A of the war-revenue act. The question is an important one, and has been carefully considered.

The essential requirements which render an instrument liable to tax imposed under the head of conveyances in Schedule A are (1) the subject of conveyance must be lands, tenements, or *other realty*; (2) it must convey to or vest some interest in the purchaser.

It will not be seriously contended that a mine, being an integral part of land, is not realty; therefore a conveyance of a mine is a conveyance of realty.

The law does not state the extent or duration of the interest that may be conveyed or vested in the purchaser by an instrument to make it taxable as a conveyance.

The Supreme Court in the case of *Black v. Elkhorn Mining Company* (163 U. S., 45) say:

The interest in a mining claim prior to the payment of any money for the granting of a patent for the land is nothing more than a right to the exclusive possession of the land based upon conditions subsequent, a failure to perform which forfeits the locator's interest in the claim.

In the opinion of this office, the conveyance of a right to the exclusive possession of land subject to conditions subsequent, on the performance of which his right may become absolute, is such a conveyance as vests an interest in the purchaser, and is taxable within the meaning of the law.

It is, therefore, held that the conveyance of a mine located on unpatented land is subject to tax as a conveyance at the rate of 50 cents on each \$500 or fractional part thereof.

Mr. Voorhees has been referred to you, and you will please advise him as above. * * *

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. DAVID M. DUNNE, *Collector Internal Revenue, Portland, Oreg.*

(21108.)

Stamp tax—Deeds of gift.

Conveyances from a husband to a third party, and from said third party to the wife of original grantor, to operate as a gift to the wife, are each taxable; tax based on value of real estate passing by the conveyances.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 6, 1899.

SIR: This office is in receipt of a letter from Mr. W. H. Rosenbault, 280 Broadway, New York City, under date of April 29, 1899, in which he asks if conveyances operating as gifts of real estate are subject to taxation—as, for instance, a conveyance from a husband to his wife for the purpose of a gift to his wife.

In reply, you will please inform him that all conveyances of real estate which operate as gifts are subject to taxation, and the tax is based upon the value of the real estate conveyed by the instrument, and this value is to be found as though the property were unincumbered, if it is incumbered.

When a husband desires to convey property to his wife for the purpose of a gift, and the property is conveyed to a third party, and by said third party conveyed to the wife, both deeds are subject to a taxation based on the value of the property conveyed.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. C. H. TREAT, *Collector Second District, New York, N. Y.*

(21283.)

Stamp tax—Deeds of conveyance.

Deeds of conveyance executed by and between tenants in common not taxable,—
Deeds of conveyance executed by and between joint tenants taxable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 20, 1899.

SIR: This office is in receipt of your letter of the 6th instant, relative to the execution of four deeds by four heirs of the estate of Washington Harris. The decedent left his estate to his four children, and in pursuance of an amicable partition the property is to be equally divided among these four heirs. You state that the effect of the conveyance is that the heirs acquire in severalty what they before owned as joint tenants, and you desire to know whether these instruments are subject to taxation.

In reply, you are informed that if these heirs are tenants in common, no taxation accrues on the instrument. You state, however, that the property is owned by the heirs as joint tenants. In this case a taxation would accrue. In the case of tenants in common, each tenant owns the whole of a part and the conveyances executed are for the purpose of marking out or defining the part belonging to each.

In the case of joint tenants, each owns a part of the whole, and in a division between them there is an exchange of land and the instruments evidencing this vesting are subject to taxation.

Therefore, the question of whether or not the deeds referred to by you are subject to taxation depends upon the fact of whether or not the heirs are tenants in common or joint tenants.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Messrs. CRAWFORD LOUGHLIN & DALLAS, *Philadelphia, Pa.*

(21537.)

Stamp tax—Deed used in ground-rent system taxable as conveyance.

Ground-rent deed incorporated in the following ruling taxable as a conveyance and not as a lease.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 23, 1899.

SIR: It appears that in the city of Baltimore considerable doubt exists as to the proper application of the requirements of certain paragraphs in Schedule A in reference to instruments of conveyance used in the city of Baltimore in the pursuance of real estate transactions arising out of what is ordinarily termed a "ground-rent system."

The paragraphs in Schedule A that are to be construed in reference to these documents are as follows:

Conveyance: Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value exceeds one hundred dollars and does not exceed five hundred dollars, fifty cents; and for each additional five hundred dollars or fractional part thereof in excess of five hundred dollars, fifty cents.

Lease, agreement, memorandum, or contract for the hire, use, or rent of any land, tenement, or portion thereof—

If for a period of time not exceeding one year, twenty-five cents.

If for a period of time exceeding one year, and not exceeding three years, fifty cents.

If for a period exceeding three years, one dollar.

In this connection you have personally submitted the following instrument and inquired as to the proper revenue taxation accruing upon the same under the requirements of the act of June 13, 1898:

This deed, made this 19th day of August, in the year 1899, between A. B. ———, of Baltimore City, ——— in the State of Maryland, of the first part, and ——— C. D., of the same city and State, ——— of the second part:

Witnesseth, that in consideration of the sum of \$1,000, ——— the said A. B. ——— does grant unto the said C. D. ———, his personal representatives and assigns, all that lot of ground situate in Baltimore City aforesaid, and described as follows—that is to say: ——— Beginning for the same on the north side of E street at the distance of 20 feet westerly from the corner formed by the north side of E street and the west side of F street, and running thence westwardly on the north side of E street 20 feet, thence northwardly 100 feet, thence eastwardly 20 feet, thence southwardly 100 feet to the place of beginning.

Being the same lot which was conveyed by H. to A. B., by deed dated August 18, 1899, and recorded among the land records of Baltimore City in liber ———, folio ———, etc.

Together with the building thereupon; and the rights, alley, ways, waters, privileges, appurtenances, and advantages thereunto belonging or in anywise appertaining.

To have and to hold the said described lot of ground and premises, unto and to use of the said C. D. ———, his personal representatives and assigns, for all the residue of the term of years yet to come and unexpired therein, with the benefit of renewal forever; subject to the payment of the annual rent of \$60, payable on the 1st day of January and July in each and every year.

And the said A. B. ——— hereby covenants that he has not done or suffered to be done any act, matter, or thing whatsoever to encumber the property hereby conveyed; that he will warrant specially the property hereby granted, and that he will execute such further assurances of the same as may be requisite.

Witness the hand and seal of the said grantor.

Test: G. H.

A. B. [SEAL.]

[Then follows the officers' acknowledgment.]

There are several conveyances used in the various steps attending the transfer of real estate under a ground-rent system, and owing to the peculiarities existing under such a system it is not deemed wise to make general rulings which might be misconstrued and misinterpreted. Therefore, the instrument above set forth will only be considered.

It appears to this office that A. B., the grantor in the above document, grants to C. D., for the sum of \$1,000, the lot mentioned, together with the building thereupon, and the rights, alleys, ways, waters, privileges, appurtenances, and advantages thereunto belonging or in any wise appertaining.

In addition to the consideration of \$1,000, C. D. is required to pay the sum of \$60 annual rental, payable semiannually in each and every year of the unexpired term of what must be presumed to be a previously executed document, because no specific term is mentioned in the instrument under discussion. The grantee in this instrument has the benefit of renewing forever the term that must appear in some other instrument, as aforesaid.

This office is of the opinion that this instrument should be taxed under the provision in the paragraph of Schedule A relating to conveyances of realty, and you are, therefore, advised that the instrument should be stamped on a basis of the consideration named when it is an actual one, and upon the value of the estate conveyed when the consideration is nominal, and that in no instance is the tax applicable to leases the proper one to be applied to the above document.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,

Acting Commissioner.

MR. BENJ. F. PARLETT, *Collector Internal Revenue, Baltimore, Md.*

(21562.)

Stamp tax—Deeds of conveyance.

A deed of conveyance conveying real estate that lies in countries that are not United States territory is not subject to taxation, though the grantor and grantee may each be citizens and residents of the United States.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 1, 1899.

SIR: This office is in receipt of your letter of August 26, 1899, in which you ask if a deed conveying realty in the Republic of Mexico, executed by one citizen of the United States to another, requires any revenue stamp.

In reply, you are informed that it does not require any United States documentary revenue stamp.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. LOUIS FOX, *Fort Wayne, Ind.*

(21583.)

Stamp tax—Deeds of conveyance.

Deed from executor of deceased person, who held real estate in trust, to the succeeding person as trustee is taxable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 5, 1899.

SIR: Under date of the 24th ultimo, this office received a letter from Lyman D. Gilbert, of Harrisburg, Pa., asking for a reconsideration of the question of taxation on a deed of conveyance executed by the executors of the Right Rev. Bishop McGovern to the Right Rev. J. F. Shanahan, the present Roman Catholic bishop of the diocese of Harrisburg. Under date of August 22, this office advised E. Z. Gross, recorder of Dauphin County, that this deed of conveyance was subject to taxation. The recorder asked the question, if the values in the assessment books of the county could be taken as a basis on which to compute the tax. He was advised that this could be done.

It seems that he communicated with Mr. Gilbert and advised him that this deed was subject to taxation, and Mr. Gilbert presents the question to this office for a reconsideration.

In reply to his letter, you will advise him that this deed must be stamped. The fact that the bishops of the diocese of Harrisburg hold the legal title to certain properties in trust, and that they have in previous instances appointed, by a last will and testament, executors, and

directed these executors to convey to their successor "all the property and effects, real and personal whatsoever, and wheresoever situate, in trust, to assign and convey the same in fee simple and forever unto the person who shall next succeed me (the deviser) by appointment duly made as bishop of the Harrisburg diocese, upon all and singular the same uses and trusts, and with the like powers upon which the said property and effects shall have been held by me immediately preceding my death," does not affect the question of taxation.

This is the clause in the will of the Right Rev. Bishop McGovern under which his executors execute a deed of conveyance to the present incumbent of the office. Mr. Gilbert protests that this deed of conveyance is not subject to taxation because the bishop holds title to the property in trust, and that he has no personal interest or estate therein.

You will inform him that, notwithstanding his contention, the deed is subject to taxation because it fully vests title, and by this executor's deed, and under the law, this succeeding bishop is a purchaser, although he does not pay any consideration for the conveyance. A person can, under the law, acquire title to real estate in but one of the following ways: By descent, or operation of law, or by purchase. The succeeding bishop acquires title to this real estate by purchase, and, therefore, under the provisions of the act of June 13, 1898, he is a purchaser, as set forth in the paragraph in Schedule A relating to conveyances, and the deed of conveyance is subject to taxation on a basis of the value of the real estate passing to him under the instrument, and the same should be stamped accordingly.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. HENRY L. HERSHEY, *Collector Ninth District, Lancaster, Pa.*

(21853.)

Stamp tax—Decree in "strict foreclosure."

There is no tax on a chancellor's decree, as a conveyance, in proceedings of strict foreclosure of a mortgage.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 15, 1899.

SIR: I have the honor to acknowledge the receipt of your communication of the 6th instant, submitting, in behalf of sundry attorneys at law in Vermont, certain questions in regard to documentary taxation. I quote the questions:

(1) Should any revenue stamps be placed on a decree of foreclosure upon a real estate or personal property mortgage, or upon any of the instruments, whether it be the formal decree signed by the chancellor,

or a certified copy thereof, signed by the clerk of the court, for the purpose of being filed in the land records of the town in which the mortgaged real estate or personal property is situated?

(2) If such stamps are required, when and by whom should they be affixed? (Meaning whether they should be placed upon the instrument before it goes upon the public record or the certified copy thereof.)

For the purpose of informing me specifically in regard to the questions, you state that under the law as it exists in Vermont you have what is known as a "strict foreclosure." In other words, the mortgagee, upon expiration of the time of redemption, takes the land itself, this being different from a number of other jurisdictions, in which the land would be exposed to public sale.

Under a mortgage in the State of Vermont, the mortgagee conveys his title to the real estate subject to a conditional right of redemption upon payment of the sum stipulated in the mortgage deed itself. If he fail to pay the specified sum so stated, the mortgagee's right at law at once becomes absolute, and he has the right to take immediate possession of the land. He may, under the Vermont law, as stated by you, maintain an ejectment against the mortgagor for nonpayment of the mortgage debt in accordance with its terms, or he may proceed by way of a foreclosure, which is a suit in equity, and in which, if the mortgagee obtains a decree in his favor, a time is fixed within which the mortgagor may redeem by paying the amount found due by the chancellor. This decree is nothing more nor less than a judgment of the court that there is due to the mortgagee a certain sum of money which has not been paid according to the conditions of the mortgage deed. This decree signed by the chancellor attests the fact that the mortgagee has obtained his judgment. The mortgagee holds this as his voucher, which he receives in lieu of his mortgage notes and deed, which are filed with the clerk of the court. This decree expresses the mortgagee's rights under the judgment of the court.

At the expiration of the period fixed for redemption, the mortgagee, in order to perfect his title, is required to file with the town clerk of the town in which the land lies a certified copy of this decree for the purpose of recordation in the land record; and you ask what is the taxation accruing upon this decree, if any.

In reply, you are advised that I am of the opinion, and so hold, that no taxation accrues upon this decree as a conveyance. Without having the instruments before me, and relying solely upon the facts and the law as stated in your letter, I am of the opinion that the title to the real estate mentioned in the document fully vested in the mortgagee, subject only to the conditional right of redemption. The decree of the court is simply the evidence of the judicial determination of a fact—*i. e.*, that the mortgagor has failed to comply with the requirements of payment, etc.

If the chancellor, by his decree, had directed either the sheriff or any other person to execute a deed of conveyance, conveying title to

the mortgagee, this conveyance would be taxable under the act; but no such transaction occurred.

Upon proof offered, the chancellor finds the fact which he states in his decree, and by the operation of this decree title is found to have been vested in the mortgagee by the former executed document or mortgage deed.

Upon the expiration of the period of redemption, the statute requires that a certified copy of this decree be recorded in the land record, and I hold that neither the decree nor the certified copy is subject to taxation. The decree, for the reasons above stated, is not taxable, and my reason for holding that the certified copy is not subject to taxation is that it is an instrument required to complete a legal proceeding.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Hon. H. H. POWERS,
House of Representatives, Washington, D. C.

CUSTOM-HOUSE BROKERS.

(20595.)

Special tax—Custom-house brokers.

Payment of special tax as commercial brokers does not relieve persons who act as the agents of others to arrange entries and other custom-house papers from special tax as custom-house brokers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 19, 1899.

SIR: Referring to the letter of Miller & Houghton, of 16 Beaver street, New York, under date of December 3, relative to their liability to pay special tax as custom-house brokers, you will please inform them of the ruling of this office on September 13.

"Persons should pay special tax as commercial brokers, if they act as the agents of others to arrange entries and other custom-house papers," etc., and must in addition pay the special tax as custom-house brokers. (See Treasury decision 20033,¹ September 15, 1898.)

Respectfully, yours, G. W. WILSON, *Acting Commissioner*.
Mr. CHARLES H. TREAT,
Collector Internal Revenue, New York, N. Y.

¹ Compilation of Decisions Rendered by the Commissioner of Internal Revenue under the War-Revenue Act of June 13, 1898 (January, 1899), page 141.

(20725.)

Special tax—Custom-house brokers.

Persons whose occupation it is, as agents for others, to enter and clear vessels at the custom-house, can not be relieved from payment of special tax as custom-house brokers on the ground that they have paid special tax as commercial brokers, which entitles them "to negotiate freights or other business for the owners of vessels."

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 20, 1899.

SIR: Your letter of the 27th ultimo has been received, inclosing a letter from Richard P. Buck & Co., who have been called upon to pay special tax as custom-house brokers for entering and clearing vessels, and who contend that they are not liable for this special tax, having paid special tax as commercial brokers.

You say that "they feel, under section 4 defining commercial brokers, that the clause, 'or to negotiate freights or *other business* for the owners of vessels,' that they are justified in entering and clearing vessels at the custom-house without special tax, as they are the owners of the vessels."

If they can show that, in every instance of entering and clearing vessels at the custom-house, these vessels belong to them, they are not required to pay special tax as custom-house brokers on this account.

But if it be shown that it is the occupation of this firm, "as the agent of others, to arrange entries and other custom-house papers, or transact business at any port of entry relating to the importation or exportation of goods, wares, or merchandise," they must, by the express terms of paragraph 5 of section 2 of the act of June 13, 1898, be regarded as custom-house brokers; and they must pay special tax accordingly in addition to the special tax which they have paid as commercial brokers, under paragraph 4 of that section.

Respectfully, yours, N. B. SCOTT, *Commissioner.*
Mr. CHAS. H. TREAT, *Collector Second District, New York, N. Y.*

DEEDS.

(See CONVEYANCES; MORTGAGES.)

DISTRIBUTIVE SHARES AND LEGACIES.

(See LEGACIES AND DISTRIBUTIVE SHARES.)

DRUGS AND MEDICINES.(See **MEDICINAL PREPARATIONS; PROPRIETARY ARTICLES.**)**EXCHANGES, BOARDS OF TRADE, ETC., SALES AT.**

(See also DECISIONS 21279, p. 61; 21315, p. 239.)

(20984.)

Stamp tax—Schedule A, act June 13, 1898.

Decisions of United States Supreme Court.—The provision relating to sales or agreements to sell products or merchandise at any exchange or board of trade, or other similar place, and requiring the seller to give a bill or memorandum which shall be stamped, declared constitutional.—Sales of live stock at stock yards come within the law, the same being a similar place to an exchange or board of trade.

TREASURY DEPARTMENT,**OFFICE OF COMMISSIONER OF INTERNAL REVENUE,***Washington, D. C., April 7, 1899.*

Attention is called to the appended decision of the United States Supreme Court in the case of James Nicol, appellant, *v.* James Ames, United States marshal, etc., decided April 3, 1899.

G. W. WILSON, Commissioner.**SUPREME COURT OF THE UNITED STATES. OCTOBER TERM, 1898.**

435. James Nicol, Appellant, *v.* James Ames, United States Marshal, etc. Appeal from the circuit court of the United States for the northern district of Illinois.
4. Original. *Ex parte:* In the matter of George R. Nichols, Petitioner. Petition for writ of habeas corpus.
625. Edwin S. Skillen, Appellant, *v.* John C. Ames, United States Marshal, etc. Appeal from the circuit court of the United States for the northern district of Illinois.
636. Charles H. Ingwersen, Plaintiff in Error, *v.* The United States. In error to the district court of the United States for the northern district of Illinois.

These cases involve the validity and construction of some of the provisions of section 8, and a portion of Schedule A, therein referred to, of the act of Congress approved June 13, 1898 (30 Stat., 448), entitled "An Act to provide ways and means to meet war expenditures, and for other purposes," commonly spoken of as the war-revenue act. The cases come before the court in this way:

No. 435 is an appeal to this court from an order made by the circuit court of the United States for the northern district of Illinois, discharging a writ of habeas corpus and remanding the petitioner to the custody of the marshal. The petition to the circuit court for the writ alleged that the petitioner Nicol had been convicted in the United States court for the northern district of Illinois, upon an

information duly filed charging him with selling, at the Chicago Board of Trade and at its rooms, two carloads of oats, "without then and there making and delivering to the buyer any bill, memorandum, agreement, or other evidence of said sale, showing the date thereof, the name of the seller, the amount of the same, and the matter or thing to which it referred, as required by the act of Congress," above mentioned. He was sentenced to pay a fine and to be imprisoned until paid. He refused to pay, and was taken into custody by the marshal. That part of the act referring to the making and delivering of a bill or memorandum, etc., the petitioner claimed was unconstitutional. The circuit court, after argument, held the law valid and the conviction legal.

No. 4 Original is an application to this court for leave to file a petition for a writ of habeas corpus to bring before the court the petitioner, George R. Nichols, and for a rule requiring the marshal for the northern district of Illinois, in whose custody the petitioner is, to show cause why the writ should not issue. The petition states that Nichols was convicted and sentenced, under the act of Congress above mentioned, upon an information filed in the district court of the United States for the northern district of Illinois, for selling at the Chicago Board of Trade, of which he was then a member, for immediate delivery, to one Roloson, also a member of such board, ten tierces, or three thousand pounds, of hams, then in Chicago, at a price named, amounting to \$195, and on the sale unlawfully making and delivering to Roloson a bill and memorandum of the sale showing the date thereof, the name of the seller, the amount of the same, and the matters and things to which it referred, without having the proper stamps affixed to said bill or memorandum denoting the internal revenue accruing upon said sale, bill, or memorandum, as required by law, but, on the contrary, unlawfully refusing and neglecting to affix any such stamps to said bill or memorandum. Upon the trial the jury rendered a verdict finding the petitioner guilty as charged in the information, and the court sentenced him to pay a fine of \$500 and to be committed to the county jail until such fine and costs should be paid. The petitioner refused to pay the fine, and an order of commitment was made out and placed in the hands of the marshal, who arrested the petitioner, and he is now in the custody of the marshal. The petitioner upon the trial claimed that the act in regard to the matters named in the information was unconstitutional, and therefore no offense was charged in the information; that the court had no jurisdiction to try him, and that his conviction and subsequent arrest and detention were wholly without jurisdiction. The petitioner gives as a reason for his application to this court for the writ of habeas corpus that one James Nicol (the appellant in No. 435) had been convicted of substantially the same offense in the district court for the northern district of Illinois, and that he had made application for a writ of habeas corpus to the circuit court held in that district, which court, after a hearing upon the writ, decided against Nicol and in favor of the constitutionality of the act of Congress herein questioned, and the petitioner herein alleges that it would be a vain act to apply for a writ of habeas corpus to the same circuit court which had already, after a hearing, decided the question in a way unfavorable to the claims of the petitioner herein.

No. 625 is also an appeal to this court from an order of the circuit court of the United States for the northern district of Illinois, discharging a writ of habeas corpus and remanding the petitioner Skillen

to the custody of the marshal. The petitioner was convicted upon an information of the same nature as is above set forth in No. 435, excepting that the information in this case alleged that the contract was for future delivery of 5,000 bushels of corn, and that Skillen unlawfully failed and refused to make and deliver to the buyer any bill or memorandum as required by the act. The petitioner was convicted upon a trial had upon such information, and the court imposed upon him a fine in the sum of \$500 besides costs, and directed that he should be committed to the county jail until such fine and costs were paid. The same proceedings were then taken as are set forth in No. 435.

No. 636 is a writ of error to the district court of the United States for the northern district of Illinois, to review a conviction of the plaintiff in error upon an information charging him with making a sale of certain cattle at the Union Stock Yards, Chicago, and delivering the same without making any written memorandum, etc., as required by the act of Congress. The information also charged in a second count a sale, at the same place, of certain live stock and a delivery of a memorandum of the kind mentioned in the act of Congress and a failure and refusal to affix the stamps as provided for in such act. Upon the trial a *nolle prosequi* was duly entered upon the first count. The plaintiff in error claims that the act of Congress is unconstitutional on the same grounds mentioned in the other cases, and sets up as a special and separate defense that a sale at the stock yards is not included in the act of Congress, as it is not an "exchange or board of trade or other similar place," within the meaning of that act.

Mr. Justice PECKHAM, after stating the facts, delivered the opinion of the court.

These cases may be considered together, because they involve substantially the same question, only the last one includes, in addition, a question of construction as distinguished from a question of the validity of the statute.

That portion of the act which is involved is set forth in the margin.¹ (30 Stat., 448, 450, 458.)

It is seen that the cases embrace the facts of a member of the Board of Trade of Chicago selling for immediate delivery products or merchandise: (a) without making a memorandum; (b) making a memorandum but omitting to put stamps on it; (c) making a sale for future delivery and failing to put stamps on the memorandum.

¹ ADHESIVE STAMPS.

SEC. 6. That on and after the first day of July, 1898, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this act, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons, or party who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule.

SCHEDULE A.—STAMP TAXES. (30 Stat., 448-458.)

* * * Upon each sale, agreement of sale, or agreement to sell any products or merchandise at any exchange or board of trade or other similar place, either for present or future delivery, for each one hundred dollars in value of said sale or agreement of sale or agreement to sell, one cent, and for each additional one hun-

In the Nicol case (No. 435) the sale was by a citizen to a citizen of the State of Illinois.

The case of sales at the Union Stock Yards at Chicago is also included, where a memorandum is delivered but the vendor neglects and refuses to affix the stamps to the memorandum.

The objections to the validity of the act are, stated generally, that it is a direct tax, and is illegal because not apportioned as required by the Constitution. If an indirect tax, it is a stamp tax on documents not required to be made under State law in order to render the sale valid, and Congress has no power to require a written memorandum to be made of transactions within the State for the purpose of placing a stamp thereon. It is not a privilege tax within the meaning of that term, because there is no privilege other than that which every man has to transact his own business in his own house or in his own office under such regulations as he may choose to adopt, and such a choice can not be, in any fair use of the term, a privilege which is subject to taxation.

These questions are involved in each case, while in the last one it is further objected that the sales at the stock yards are not included in the terms of the act, and evidence was adduced upon the trial as to the nature of the business conducted at the stock yards, and the manner in which it was performed. It will be adverted to hereafter when we come to a discussion of the meaning and proper construction of the act.

It is always an exceedingly grave and delicate duty to decide upon the constitutionality of an act of the Congress of the United States. The presumption, as has frequently been said, is in favor of the validity of the act, and it is only when the question is free from any reasonable doubt that the court should hold an act of the lawmaking power of the nation to be in violation of that fundamental instrument upon which all the powers of the Government rest. This is particularly true of a revenue act of Congress. The provisions of such an act should not be lightly or inadvisedly set aside, although if they be plainly antagonistic to the Constitution it is the duty of the court to so declare. The power to tax is the one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as is the air he breathes to the natural man. It is not only the power to destroy, but it is also the power to keep alive.

This necessary authority is given to Congress by the Constitution.

dred dollars or fractional part thereof in excess of one hundred dollars, one cent: *Provided*, That on every sale or agreement of sale or agreement to sell as aforesaid, there shall be made and delivered by the seller to the buyer a bill, memorandum, agreement, or other evidence of such sale, agreement of sale, or agreement to sell, to which there shall be affixed a lawful stamp or stamps in value equal to the amount of the tax on such sale. And every such bill, memorandum, or other evidence of sale or agreement to sell shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers; and any person or persons liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or persons, who shall make any such sale or agreement of sale, or agreement to sell, or who shall, in pursuance of any such sale, agreement of sale or agreement to sell, deliver any such products or merchandise without a bill, memorandum, or other evidence thereof, as herein required, or who shall deliver such bill, memorandum, or other evidence of sale, or agreement to sell, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned not more than six months, or both, at the discretion of the court.

It has power from that instrument to lay and collect taxes, duties, imposts, and excises, in order to pay the debts and provide for the common defense and general welfare, and the only constitutional restraint upon the power is that all duties, imposts, and excises shall be uniform throughout the United States, and that no capitation or other direct tax shall be laid, unless in proportion to the census or enumeration directed to be taken, and no tax or duty can be laid on articles exported from any State. (Constitution, article 1, sec. 8 and sec. 9, subdivisions 4 and 5.) As thus guarded, the whole power of taxation rests with Congress.

The commands of the Constitution in this, as in all other respects, must be obeyed; direct taxes must be apportioned, while indirect taxes must be uniform throughout the United States. But, while yielding implicit obedience to these constitutional requirements, it is no part of the duty of this court to lessen, impede, or obstruct the exercise of the taxing power by merely abstruse and subtle distinctions as to the particular nature of a specified tax, where such distinction rests more upon the differing theories of political economists than upon the practical nature of the tax itself.

In deciding upon the validity of a tax with reference to these requirements, no microscopic examination as to the purely economic or theoretical nature of the tax should be indulged in for the purpose of placing it in a category which would invalidate the tax. As a mere abstract, scientific, or economical problem, a particular tax might possibly be regarded as a direct tax, when, as a practical matter pertaining to the actual operation of the tax, it might quite plainly appear to be indirect. Under such circumstances, and while varying and disputable theories might be indulged as to the real nature of the tax, a court would not be justified, for the purpose of invalidating the tax, in placing it in a class different from that to which its practical results would consign it. Taxation is eminently practical, and is in fact brought to every man's door, and for the purpose of deciding upon its validity, a tax should be regarded in its actual, practical results, rather than with reference to those theoretical or abstract ideas whose correctness is the subject of dispute and contradiction among those who are experts in the science of political economy.

In searching for proper subjects of taxation to raise moneys for the support of the Government, Congress must have the right to recognize the manner in which the business of the country is actually transacted; how, among other things, the exchange of commodities is effected; what facilities for the conduct of business exist; what is their nature and how they operate; and what, if any, practical and recognizable distinction there may be between a transaction which is effected by means of using certain facilities, and one where such facilities are not availed of by the parties to the same kind of a transaction. Having the power to recognize these various facts, it must also follow that Congress is justified, if not compelled, in framing a statute relating to taxation, to legislate with direct reference to the existing conditions of trade and business throughout the whole country and to the manner in which they are carried on.

Coming to a consideration of the objections raised to this statute, it is well to first consider the nature of an exchange or board of trade, and then to inquire more in detail as to the validity of the act with reference to sales at such places. The Chicago Board of Trade may be taken as a type of the others in existence throughout the country, because the same features exist in all of them, while the size and importance of the

Chicago institution serve only to make such features more prominent and their effect more easily discernible. We say the same features exist in all of the exchanges or boards of trade, because we have the right to consider facts without particular proof of them, which are universally recognized, and which relate to the common and ordinary way of doing business throughout the country, and while we could not take notice without proof as to any particular constitution or by-law of a body of this description, yet we are not thereby cut off from knowledge of the general nature of those bodies and of the manner generally in which business therein is conducted.

It appears in this record that the Chicago Board of Trade is a voluntary association of individuals, who meet together at a certain building owned by the association for the purpose of there transacting business. This particular board is incorporated under an act of the legislature of Illinois, though its corporate character does not, in our judgment, form a material consideration in the inquiry. The members of the association meet daily between certain business hours for the purpose of buying and selling flour, wheat, corn, oats, and other articles of food products, and for the transaction of such other business as is incident thereto. Among its members are some whose business it is to purchase in the country, or to receive on consignment from persons in the country, some or all of the articles which are dealt in on the floor of the exchange, and there are other members whose business it is to buy such articles upon the exchange, either for themselves or on commission, and to deliver or ship the same to consumers or distributors throughout the country and in Europe.

It is common knowledge that these exchanges encourage and promote honest and fair dealing among their members; that they provide penalties for the violation of their rules in that regard, and that contracts between members relating to business on the exchange have the advantage of the sanction provided by the exchange for such purposes. They furnish a meeting place for those engaged in the purchase and sale of commodities or other things to be sold, and in that way they offer facilities for a market for them. Dealings among members so engaged tend to establish the market price of the articles they deal in, and that price is very apt to be the price for the same article when bought or sold outside.

The price is arrived at by offers to sell on the one side and to purchase on the other, until by what has frequently been termed the "higgling" of the market a price is agreed upon and the sales are accomplished. In arriving at this price, of course, the great law of the cost of production, and also that of supply and demand, enters into the problem, and it is upon a consideration of all matters regarded as material that the agreement to buy and sell is made. The prices thus fixed are usually followed when the transaction occurs outside, and the market price means really the exchange price. That an enormous amount of the business of the country which is engaged in the distribution of the commodities grown or produced therein is transacted and takes place through the medium of boards of trade or exchanges can not be doubted. Nor is there any doubt that these exchanges facilitate transactions of purchase and sale, and it would seem that such facilities or privileges, even though not granted by the Government or by a State, ought nevertheless to be recognized as existing facts and to be subject to the judgment of Congress as fit matters for taxation.

We will now examine the several objections that have been offered to this statute.

It may be stated, of course, that if the tax herein is a direct tax within the meaning of the Constitution, it is void, for there is no apportionment as required by that instrument.

It is asserted to be a direct tax, because it is a tax upon the sale of property measured by the value of the thing sold, and such a tax is a direct tax upon the property itself, and therefore subject to the rule of apportionment. Various cases are cited from *Brown v. Maryland* (12 Wheat., 419), down to those involving the validity of the income tax (157 U. S., 429; 158 *Id.*, 601), for the purpose of proving the correctness of this proposition. All the cases involved the question whether the taxes to which objection was taken amounted practically to a tax on the property. If this tax is not on the property or on the sale thereof, then these cases do not apply.

We think the tax is in effect a duty or excise laid upon the privilege, opportunity, or facility offered at boards of trade or exchanges for the transaction of the business mentioned in the act. It is not a tax upon the business itself which is so transacted, but it is a duty upon the facilities made use of and actually employed in the transaction of the business and separate and apart from the business itself. It is not a tax upon the members of the exchange nor upon membership therein, nor is it a tax upon sales generally. The act limits the tax to sales at any exchange, or board of trade, or other similar place, and its fair meaning is to impose a duty upon those privileges or facilities which are there found and made use of in the sale at such place of any product or merchandise. Whether this facility or privilege is such a thing as can be legally taxed, while leaving untaxed all other sales made outside of such places, will be discussed further on. At present it is enough to say that the tax is not upon the property sold, and can not on that ground be found to be direct. The tax laid in the same act upon a broker's note or memorandum of sale is a separate tax, although it may have reference to the same transaction. It is a tax on the note or memorandum itself where made by a broker, while in the other case the tax, although measured in amount by a reference to the value of the thing sold, is in reality upon the privilege or facility used in the transaction or sale. The tax is not a direct tax within the meaning of the Constitution, but is, as already stated, in the nature of a duty or an excise. The amount of such a tax, when imposed in a case like this, may be increased or diminished by the extent to which the privilege or facility is used, and it is measured in this act by the value of the property transferred by means of using such privilege or facility, but this does not make the tax a direct one. A tax on professional receipts was recognized by the present Chief Justice in delivering the opinion of the court on the first hearing of the income-tax case (157 U. S., 429, 579), as an excise or duty, and, therefore, indirect, while a tax on the income of personalty he thought might be regarded as direct. And upon the rehearing (158 *id.*, 601) it was distinctly held that the tax on personal property, or on the income thereof, was a direct tax. This tax is neither a tax on the personal property sold nor upon the income thereof, although its amount is measured by the value of the property that is sold at the exchange or board of trade.

It is also said that the tax is direct because it can not be added to the price of the thing sold, and therefore ultimately paid by the consumer. In other words, that it is direct because the owner can not shift the

payment of the amount of the tax to some one else. This, however, assumes that the tax is not in the nature of a duty or an excise, but that it is laid directly upon the property sold, which we hold is not the case. It is not laid upon the property at all, nor upon the profits of the sale thereof, nor upon the sale itself considered separate and apart from the place and the circumstances of the sale.

We do not see that any material difference exists when the sale is for future delivery. The thing agreed to be sold is the same, whether for immediate or future delivery, and the fact that the sale for future delivery may subsequently be carried out by the actual payment of the difference between the agreed and the market price at the time agreed upon for such delivery does not affect the case. The privilege used is the same, whether for immediate or future delivery, and the same rule applies to both.

Passing these grounds of objection, it is urged that if this is an indirect tax, it is not uniform throughout the United States, as required by the Constitution. Sales at an exchange or board of trade, it is said, are singled out for taxation under this act, although they differ in no substantial respect from sales at other places, and there is therefore no just ground for segregating or classifying such sales from those made elsewhere. A sale at an exchange or board of trade, it is claimed, is not a privilege or facility which can or justly ought to be taxed while all other sales at all other places are exempted from taxation, and there is no reasonable ground therefore for the assertion that such a tax is uniform within the meaning of the Constitution. It is said not to be uniform because it is unequal, taxing sales at exchanges and exempting all other sales, while at the same time there is no natural basis for any distinction between such sales, the distinction made being purely arbitrary and unreasonable.

This general objection on the ground of want of uniformity is not, in our judgment, well founded. Whether the word "uniform" is to be understood in what has been termed its "geographical" sense, or as meaning uniformity as to all the taxpayers similarly situated with regard to the subject-matter of the tax, we think this tax is valid within either meaning of the term. In our judgment, a sale at an exchange does form a proper basis for a classification which excludes all sales made elsewhere from taxation. If it were to be assumed that taxes upon corporate franchises or privileges may be imposed only by the authority that created them, it does not follow that no privilege or facility can be taxed which is not created by the government of a State or by Congress. In order to tax it, the privilege or facility must exist in fact, but it is not necessary that it should be created by the Government. The question always is, when a classification is made, whether there is any reasonable ground for it, or whether it is only and simply arbitrary, based upon no real distinction and entirely unnatural. (*Railroad Company v. Ellis*, 165 U. S., 150-155; *Magoun v. Illinois Trust and Savings Bank*, 170 U. S., 283, 294.) If the classification be proper and legal, then there is the requisite uniformity in that respect.

A tax upon the privilege of selling property at the exchange and of thus using the facilities there offered in accomplishing the sale differs radically from a tax upon every sale made in any place. The latter tax is really and practically upon property. It takes no notice of any kind of privilege or facility, and the fact of a sale is alone regarded. Although not created by government, this privilege or facility in effecting a sale at an exchange is so distinct and definite in its character, and

constitutes so clear and plain a difference from a sale elsewhere, as to create a reasonable and substantial ground for classification and for taxation when similar sales at other places are untaxed. A sale at an exchange differs from a sale made at a man's private office, or on his farm, or by a partnership, because, although the subject-matter of the sale may be the same in each case, there are at an exchange certain advantages in the way of finding a market, obtaining a price, the saving of time, and in the security of payment, and other matters, which are more easily obtained there than at an office or upon a farm. To accomplish a sale at one's farm, or house, or office might and probably would occupy a great deal of time in finding a customer, bringing him to the spot, and agreeing on a price. All this can be done at an exchange in the very shortest time and at the least inconvenience. The market is there, and all that is necessary is to send the commodity. Although a sale is the result in each case and the thing sold, may be of the same kind, the difference exists in the means and facilities for accomplishing such sale, and those means and facilities there is no reason for saying may not be taxed, unless all sales are taxed, whether the facilities be used or not.

In this case there is that uniformity which the Constitution requires. The tax or duty is uniform throughout the United States, and it is uniform, or, in other words, equal, upon all who avail themselves of the privileges or facilities offered at the exchanges, and it is not necessary in order to be uniform that the tax should be levied upon all who make sales of the same kind of things, whether at an exchange or elsewhere.

Another objection taken is that Congress taxes only those who make sales and not those who make purchases, and those who sell products or merchandise and not those who sell bonds, stocks, etc. These are discriminations, it is said, which do not follow the rule of uniformity, and hence render the tax void.

A purchase occurs whenever a sale is effected, and to say that a purchaser at an exchange sale must be taxed for the facilities made use of in making the purchase, or else that the tax on the seller is void, is simply to insist upon doubling the tax.

Nor is it necessary to tax the use of the privilege under all circumstances in order to render the tax valid upon its use in particular cases. We see no reason why it should be necessary to tax a privilege whenever it is used for any purpose, or else not tax it at all. It is not in its nature indivisible. A tax upon the privilege when used for one purpose does not require for its validity that the same privilege should also be taxed when used for another and a totally distinct purpose. It may be the same privilege, but when it is used in different cases to accomplish sales of wholly different things, between which there is no relation whatever, one use may be taxed and the other not, and no rule of uniformity will thereby be violated.

It is also objected that there is no power in Congress to require a party selling personal property, in the course of commerce within the State, to make a written note or memorandum of the contract, and to punish him by a fine and imprisonment for a failure to do so; if the State do not require a memorandum on a sale, Congress can not in the exercise of the taxing power compel a citizen to make one in order that it may be taxed by the United States.

In holding that the tax under consideration is a tax on the privilege used in making sales at an exchange, we thereby hold that it is not a tax upon the memorandum required by the statute upon which the

stamp is to be placed. The act does not assume to in any manner interfere with the laws of the State in relation to the contract of sale. The memorandum required does not contain all the essentials of a contract to sell. It need not be signed, and it need not contain the name of the vendee or the terms of payment. The statute does not render a sale void without the memorandum or stamp, which by the laws of the State would otherwise be valid. It does not assume to enact anything in opposition to the law of any State upon the subject of sales. It provides for a written memorandum containing the matters mentioned, simply as a means of identifying the sale and for collecting the tax by means of the required stamp, and for that purpose it secures by proper penalties the making of the memorandum. Instead of a memorandum, Congress might have required a sworn report, with the proper amount of stamps thereon to be made at certain regular intervals, of all sales made subject to the tax. Other means might have been resorted to for the same purpose. Whether the means adopted were the best and most convenient to accomplish that purpose was a question for the judgment of Congress, and its decision must be conclusive in that respect.

The means actually adopted do not illegally interfere with or obstruct the internal commerce of the States, nor are such means a restraint upon that commerce so far as to render the means adopted illegal. That Congress might have adopted some other means for collecting the tax which would prove less troublesome or annoying to the taxpayer can surely be no reason for holding that the method set forth in the act renders the tax invalid. As it has power to impose the tax, the means to be adopted for its collection within reasonable and rational limits must be a question for Congress alone.

We come now to the special objection raised in the case of Ingwersen, No. 636, and which applies to this case alone.

The sales were made at the Union Stock Yards, and it is claimed the statute does not cover the case of sales there made, because it is not an exchange or board of trade or other similar place.

The facts upon which the question arises are found in the record, and it shows that the Union Stock Yard and Transit Company of Chicago is a corporation which was incorporated under the laws of the State of Illinois in 1865. Under that charter the company had power to maintain cattle yards for the reception and safe-keeping, feeding, weighing, and transfer of cattle, and other matters connected therewith, which are set out in full in the charter. The character of the business and the manner in which it is conducted are fully set forth in the record, from which the following extract is taken:

"The Union Stock Yards described in this information, at the respective times therein mentioned and theretofore and since, covered and cover three hundred and thirty-five acres of land situated between Thirty-ninth street and Forty-seventh street and Halstead street and Ashland avenue, in the city of Chicago, in the county of Cook and State of Illinois, of which two hundred acres are covered by pens, which are made by fences surrounding and inclosing the same, there being alleys running through the yards separating the pens, into which alleys gates lead from the pens. The number of the pens is about five thousand, and they are in size respectively from eight feet square to fifty feet square. Railway tracks belonging to and operated by the Chicago Junction Railway Company, which connect with all the lines of railway to the city of Chicago, extend into the yards, over which cattle, hogs, and other live stock received at or shipped from the Union Stock Yards

are carried. Upon the arrival of cattle, hogs, or other live stock at the Union Stock Yards consigned to the commission merchant at the Union Stock Yards, such cattle, hogs, or other live stock are placed by the owner or consignee thereof or his or its agents in one or more of the pens, and are there cared for, fed, and watered by such owner or consignee. Any person is at liberty to send, take, or to receive cattle, hogs, or other live stock into the Union Stock Yards, and there place or have the same placed in a pen or pens, care for the same, and there sell any cattle belonging to him or which he has the right to sell. Any person has access to the pens containing cattle, hogs, or other live stock for the purpose of buying the same, and has liberty to purchase or negotiate for the purchase thereof. Sales of cattle, hogs, and other live stock in the yards are at private sale. Commission merchants having cattle, hogs, or other live stock in a pen or pens in the yards seek and solicit a buyer therefor, and when a proposed buyer is so found take him to the pens in which such live stock is contained, and there exhibit such live stock; and to such proposed buyer, or to any person who may come to said pen and who may desire to buy, such livestock is sold in the pen in which they are yarded. Sales of cattle, hogs, and sheep in the yards are by weight, and upon a sale thereof being made such live stock is taken by the owner or commission merchant having charge thereof from the pen in which it is confined to a scale or scales in the yard and belonging to the Union Stock Yard and Transit Company, and are there weighed by a weighmaster employed by the Union Stock Yard and Transit Company and in charge of the scale in which said live stock are weighed, and the weight of such live stock is thereby determined as the weight for which the purchaser pays upon his purchase, and the amount of the purchase price at the price per pound or per hundred pounds fixed in such sale is thereby determined."

The corporation has nothing to do with the selling or purchasing of stock of any kind. The market at the Union Stock Yards is unquestionably the largest in the country.

The plaintiff in error at these yards, as agent for a corporation then carrying on the business of a live stock commission character, and which was a dealer in live stock, sold to another as agent for the Eastman Company, also a corporation created for the purpose of dealing in live stock, a certain amount of merchandise for present delivery without affixing any stamp to the memorandum.

We can not see any real distinction sufficient in substance to call for a different decision between the Union Stock Yards and an exchange or board of trade. We think it is a "similar place" within the meaning of the statute under consideration.

It is true that there are no sales or purchases of stock made by members of the stock yards company as such. Anyone is accorded the right to bring his cattle to the stock yards upon payment of the regular fees and compliance with the regulations made by the company, and, having brought his cattle, he has the right accorded him by the company to have them kept, fed, watered, etc., and to sell them himself or by a commission merchant, who need not be a member of the stock yards company.

It is plain to be seen that the privilege or facility for a sale of the cattle or other stock at the yards of such company is of precisely the same nature and character as that which exists at an exchange or board of trade which is so described in terms. That the sales are made by the owners of the cattle or by commission merchants who are not members of the stock yards company is not material. The facilities for a sale exist, and are made use of in each case, and are

in truth the same in each. A perusal of the facts contained in the record in the case shows that those yards answer all the purposes of an exchange or board of trade, and that they in truth amount in substance to the same thing. The differences existing between them are unsubstantial so far as this point is concerned. The sales at that place are accomplished with a facility which it is plain could not exist but for the conditions and advantages afforded by the use of those yards.

The owner of the cattle who brings them to the yards and avails himself of the privilege of selling them at that place does without doubt make use of a privilege which everyone knows is an advantage sufficient to constitute a material difference between a sale at the yards and a sale elsewhere. This advantage, although one which any person could use, is yet of precisely the same nature as that existing in the case of an exchange or board of trade, and it is, therefore, a similar place within the meaning of the statute. Being a similar place, the reasons stated in the foregoing cases apply with equal force here and demand the same judgment.

For the reasons above stated, we make the following disposition of the cases before us:

In Nos. 435 and 625, the orders of the circuit court of the United States for the northern district of Illinois are affirmed.

In No. 4 Original, the petition for a writ of habeas corpus is denied.

In No. 636, the judgment of the district court of the United States for the northern district of Illinois is affirmed.

(21148.)

Stamp tax—Sales at exchanges, etc.

Tax on sales at an exchange, board of trade, or other similar place.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 10, 1899.

SIR: I have to acknowledge the receipt of your letter of the 27th ultimo, in which you inquire as to the liability to stamp tax of the bills or memoranda of sales which are made at the American Horse Exchange, Broadway and Fiftieth street, New York, where the business of selling horses at both public auction and private sale is conducted.

You also ask in regard to the Fiss, Doerr & Carroll Horse Company, and Van Tassell & Hearney's stables, where business similar to that of the American Horse Exchange is carried on.

In reply, you are advised that if, as understood from your letter, these are places under private management, where only one concern conducts the sales made either at auction or in private, no taxation would accrue on the evidences of sales made under such circumstances.

To constitute an exchange, board of trade, or other similar place, this office rules that there must be more than one person, company, or partnership authorized to negotiate sales thereat.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Mr. F. G. THOMPSON, *Revenue Agent, New York, N. Y.*

EXHIBITIONS AND SHOWS.

(20486.)

Special tax—Exhibitions.

A boxing exhibition to which an admission fee is charged is a public exhibition for money, even though no profit is derived therefrom, and special tax is required to be paid therefor.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 3, 1899.

SIR: I have received your letter of the 29th ultimo, concerning the demand notice which has been served upon your club to pay a special tax of \$5.83 for a "boxing event" given by the club December 22 at the opera house in Fairmont.

You request that a ruling be made by this office that it is unnecessary for you to pay this tax, on the ground that in giving the boxing match you had "to hire the opera house" because you had no suitable place of your own, and that you "charged an admission fee not for the purpose of profit."

There is nothing in the language of paragraph 8 of section 2 of the act of June 13, 1898, imposing a special tax on proprietors or agents of public exhibitions or shows that confines this special tax to such shows as are given for profit. The language is "for money," and it matters not, therefore, whether any profit was actually derived from the exhibition or show or not, so far as the question of special-tax liability under this paragraph is concerned.

In the opinion of this office, the exhibition of boxing given by the Fairmont Club, for admission to which a fee was charged to the public, is a public exhibition or show for money within the meaning of the statute, for which it is imperative that the special tax shall be collected. Your request, therefore, can not be complied with.

As to the billiard tables in your club, for which you were not required to pay special tax, by reference to the law (paragraph 9 of section 2 of the war-revenue act) you will see that special tax is only required to be paid for billiard tables which are "open to the public with or without price." Billiard tables in a club, not being open to the public, it is clear, do not come within the meaning of the statute.

Respectfully, yours,

N. B. SCOTT, *Commissioner.*

Mr. WILLIAM S. STEVENSON,

Vice-President Fairmont Athletic Club, Fairmont, W. Va.

(20499.)

Special tax—Exhibition—Skating rinks.

Where the admission fee charged for a skating rink is merely to entitle the persons paying it to the privilege of skating, special tax is not required to be paid therefor; but where it entitles them to witness the exhibition of skating, it is a public exhibition or show for money for which special tax is required to be paid.—Special tax is required to be paid for "indoor baseball" exhibitions and "crystal maze" exhibitions to which an entrance fee is charged.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 4, 1899.

SIR: In reply to your letter of the 28th ultimo, you are hereby advised that "indoor skating rinks" or "ice skating rinks," if the admission fee charged therefor is to entitle persons paying it to the privilege of skating, and not to witness an exhibition of skating, are held not to be public exhibitions or shows within the meaning of paragraph 8 of section 2 of the act of June 13, 1898; but an "indoor baseball" exhibition or a "crystal maze" exhibition to which an entrance fee is charged is such a public exhibition or show, and special tax is required to be paid therefor under that paragraph.

Respectfully, yours,

N. B. SCOTT, *Commissioner.*

Mr. V. FLECKENSTEIN,

Collector Twenty-eighth District, Rochester, N. Y.

(20500.)

Special tax—Opera house.

The proprietor of an opera house in a town whose population is less than 25,000, who himself gives no exhibitions therein, is not required to pay any special tax therefor under section 2 of the war-revenue act.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 5, 1899.

SIR: In reply to a letter addressed to this office on the 22d ultimo by Mr. R. A. Williams, of Wadesboro, N. C., * * * you will please inform him that a manager of an opera house in a place whose population, he says, "is less than 1,500," and who does not himself give exhibitions in his opera house, but merely rents it to theatrical or concert companies for exhibitions given by them, is not required to pay any special tax under the second section of the act of June 13, 1898.

Giving no exhibitions himself, he clearly does not come under the eighth paragraph of that section, and, therefore, is not required to pay the ten-dollar special tax thereunder; and being the manager of an opera house, in a town having less than "twenty-five thousand

population as shown by the last preceding United States census," he is, by the terms of paragraph 6, exempt from special tax under that paragraph.

Respectfully, yours, N. B. SCOTT, *Commissioner*.
Mr. H. S. HARKINS, *Collector Fifth District, Asheville, N. C.*

(20501.)

Special tax—Concert company.

A concert company giving an entertainment, with regular charges of admission (not for any church, charitable, or other public object), is required to pay special tax under paragraph 8 of section 2, act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 5, 1899.

SIR: Your letter of the 28th ultimo has been received, inclosing a protest made by the manager of a "lyceum bureau" against your action in collecting special tax and penalty from the Schubert Glee Club. You say:

The entertainment was a professional one, with regular charges of admission, and a purely money-making enterprise on the part of those composing the organization.

Upon this statement of facts, this office approves your action in collecting special tax from this company under paragraph 8 of section 2 of the act of June 13, 1898, together with 50 per cent penalty for failure to make the prescribed return within the calendar month in which the liability began.

Reading paragraph 6 of this section together with paragraph 8, it is the opinion of this office that it is the intent of the statute to include concert companies among those shows for which special tax is required to be paid; and it is held that such companies giving concerts for money (not for any church, charitable, or other public object) must be required to pay special tax under paragraph 8:

Respectfully, yours, N. B. SCOTT, *Commissioner*.
Mr. A. B. WHITE,

Collector Internal Revenue, Parkersburg, W. Va.

(20504.)

Special tax—Exhibitions.

Where an amusement company has several different companies playing at the same time at several places in the same State, separate special tax is required to be paid and a separate stamp taken out for each.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 6, 1899.

SIR: Your letter of the 31st ultimo has been received, reporting that the agent of the Carter Amusement Company, on the 18th of

October last, paid special tax for a public exhibition in the "State of Florida at large," and "stated at the time that the Carter Amusement Company had ten or twelve different companies on the road, all owned and operated by the said Carter Amusement Company, and that each of those companies was entitled to perform in this State under the one special tax stamp." You say:

It appears that the former collector informed him that he was correct.

You are hereby advised that the information thus given him was entirely incorrect. There is no foundation for it under any provision of the war-revenue act or under any other statutes relating to internal revenue. Each of these companies, playing in any State, must have with it the requisite special-tax stamp for that State, in order that it may exhibit it to any revenue agent or deputy collector calling for it. If the stamp is not so held, the manager of the company becomes liable to criminal prosecution.

If the proprietor of the Carter Amusement Company had ten companies beginning performances in the State of Florida, in the month of October last, at different places, a separate special-tax return should have been made to the collector for each of these companies, and a separate special tax should have been paid under paragraph 8 of section 2 of the act of June 13, 1898, and a separate stamp issued to each.

Respectfully, yours,

N. B. SCOTT, *Commissioner*.

Mr. JOSEPH E. LEE,

Collector Internal Revenue, Jacksonville, Fla.

(20543.)

Special tax—Exhibitions.

The requisite special-tax stamp is required to be held for entertainments given for money by quartettes and concert companies for the profit of those concerned therein.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 11, 1899.

SIR: Your letter of the 23d ultimo has been received, requesting a ruling from this office with reference to the special-tax liability of lyceum bureaus, lecturers, readers, quartettes, and concert companies.

This office has already held that lecturers and readers, exhibiting no stereopticon or other pictures or illustrations, although the public are charged a price of admission to hear them, do not give a public exhibition or show within the meaning of the eighth paragraph of section 2 of the act of June 13, 1898, and, therefore, that special tax is not required of them under that section on account of their lectures and readings. But as to quartettes and concert companies, whose entertainments are given for money, for the profit of those concerned

therein, it is held that each of these companies must hold the requisite special-tax stamp under paragraph 8 of section 2 of this act for each State in which such entertainments are given, unless such exhibitions are given only in a theater or opera house, in a large city, whose proprietor holds the hundred-dollar special-tax stamp, or unless the local bureau, or the person under whose auspices the entertainment is given, in any town, holds the requisite special-tax stamp under paragraph 8.

Respectfully, yours,

G. W. WILSON,
Acting Commissioner.

Mr. GEORGE W. WHITE, *Boston, Mass.*

(20609.)

Special tax—Lecture bureaus, etc.

Special tax is required where lecture bureaus or other like organizations send out lecturers giving stereopticon or other illustrations, or where concert or other companies give exhibitions for their own pecuniary profit.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 24, 1899.

SIR: Your letter of the 20th instant has been received, inclosing a letter addressed to you by the representative of the Women's Club of Mendon, Mich., relating to the question of the special-tax liability, under the war-revenue act, of clubs and others under whose auspices entertainments are given by "home talent."

Section 2 of the act of June 13, 1898, after providing for payment of special tax by proprietors of theaters, museums, and concert halls in cities having more than 25,000 population, and by proprietors of circuses, requires, by the terms of paragraph 8, that "proprietors or agents of all other public exhibitions or shows for money not enumerated in this section shall pay ten dollars."

It is held by this office that this provision of paragraph 8 does not contemplate the payment of special tax for entertainments given for church or charitable or other public objects, or for school exhibitions, singing school entertainments, or other like exhibitions or shows which are not given for the pecuniary profit of the individuals taking part therein.

But where lecture bureaus or other like organizations send out lecturers giving stereopticon or other illustrations on the stage, or concert companies, or any other companies who give exhibitions for their own pecuniary profit, these lecturers or companies should bring with them the requisite special-tax stamp, under paragraph 8, for the performances to be given by them, even though their exhibitions are given under the auspices of a local club.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*
Hon. J. C. BURROWS, *United States Senate.*

(20679.)

Special tax—Concerts or exhibitions.

Piano playing by one person, or music furnished by a music box or orchestration, is neither a concert nor a show or exhibition; special tax is not required to be paid therefor.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 6, 1899.

SIR: In reply to your letter of the 31st ultimo, you are hereby advised that a former ruling of this office, holding that the proprietor of a saloon who, to enhance his trade, employs a number of persons to give regular concerts in his saloon, is required to pay special tax therefor under paragraph 8 of section 2 of the act of June 13, 1898, is not applicable to the case of a proprietor who merely employs one person to play on a piano in his saloon or who has only a music box or an orchestration.

Piano playing by one person or music furnished by an orchestration or music box does not constitute a concert in the usual definition of the word "concert;" nor, in the opinion of this office, does it constitute an exhibition or show within the meaning of the second section of the war-revenue act.

Respectfully, yours, N. B. SCOTT, *Commissioner.*
Mr. J. M. KEMBLE, *Collector Fourth District, Burlington, Iowa.*

(20722.)

Special tax—Concerts in stores.

Special tax is not required to be paid by proprietors of stores for a musical entertainment by a band hired by them for the entertainment of their customers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 18, 1899.

SIR: Letters have been received from you, dated the 6th instant, recommending, on report made to you by Special Deputy Collector Worth, that special tax and penalty be assessed against Hale Brothers and the Emporium and Golden Rule Bazaar, and against the Spreckels Rotisserie and the Poodle Dog Café, all of San Francisco, as proprietors of exhibitions or shows under the eighth paragraph of section 2 of the act of June 13, 1898, Hale Brothers and the Emporium and Golden Rule Bazaar conducting department stores, at which, "during certain hours each Saturday evening," they have a band of musicians "playing musical instruments for the purpose of entertaining their customers, to attract trade to the establishment, and to increase their sales," and the Spreckels Rotisserie being a place where meals, liquors,

etc., are served, and where, "during certain hours each Saturday and Sunday evenings, they have three musicians playing musical instruments for the purpose of entertaining their patrons and encouraging trade," etc.

The published ruling of this office relating to concert saloons or bar-rooms, where stage performances are regularly given for money, either directly or indirectly, is not to be extended to apply to cases such as those reported by Special Deputy Collector Worth, as set forth in your letters. Assessment will, therefore, not be made in these cases, and you will please so inform Mr. Worth.

As to the Poodle Dog Café, where it was found that "during certain hours each evening they had three musicians playing musical instruments for the purpose of entertaining the patrons of the café and encouraging its trade," etc., if it is true (as Mr. Worth says the proprietors assert) "that they do not pay the musicians for their services," and that "they depend entirely upon voluntary contributions for their compensation," the proprietors of this café are not, on this account, liable for special tax under the eighth paragraph of section 2 of the act of June 13, 1898.

Respectfully, yours, N. B. SCOTT, *Commissioner.*
Mr. B. M. THOMAS, *Revenue Agent, San Francisco, Cal.*

(20783.)

Special tax—Theatrical companies.

It is the duty of proprietors of exhibitions or shows for money to inform themselves as to the requirements of the law relating to their business, and to ascertain the name and address of the collector in each district in which their special-tax liability begins, and to pay the requisite special tax. Failing to do so, they are criminally liable under section 4, act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 1, 1899.

SIR: In reply to your letter of the 18th ultimo, stating that it is difficult for the proprietor or agent of a theatrical company, going from one State to another, to find anyone authorized to furnish the requisite special-tax stamp, and inquiring whether or not "these licenses can not be obtained through some one place," you are hereby advised that when a theatrical company enters any State the proprietor is required by the law to make application to the collector of internal revenue in the district in that State in which the company is about to begin playing (or to his deputy). It is his duty to ascertain the name and address of the collector, who, upon his written application, will immediately forward to him the prescribed form for making the sworn return, and will receive from him the amount of the special

tax and issue the requisite stamp. Whatever inconvenience the theatrical companies may thus be put to, they must comply with this requirement.

The proprietors or agents of exhibitions or shows for money must, like all other special-tax payers, inform themselves as to the provisions of the law relating to their business. If they fail to do so and neglect to take out the requisite special-tax stamp within the time prescribed by the law, they incur the penalty provided in the last clause of section 4 of the act of June 13, 1898, which reads that—

Every person who carries on any business or occupation for which special taxes are imposed by this Act, without having paid the special tax herein provided, shall, besides being liable to the payment of such special tax, be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than five hundred dollars, or be imprisoned not more than six months, or both, at the discretion of the court.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. SANFORD DODGE, *Pendleton, Oreg.*

(20840.)

Special tax—Exhibitions given by local clubs.

Amateur clubs or local organizations giving exhibitions, even though they charge an admission price, are not required to pay special tax therefor if the proceeds thereof are not for the pecuniary profit of the clubs or associations, but are devoted to some charitable or public object and payment of expenses.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 11, 1899.

SIR: In reply to the question of the special-tax liability of amateur dramatic clubs, referred to in the letter addressed to you by one of your constituents, Mr. Carl A. Frenchy, of Northfield, Conn., which you recently brought to my attention, you will please inform him that it is held by this office that where an amateur club or any local organization gives exhibitions or entertainments, even though an admission price thereto is charged, special tax is not required to be paid therefor under the eighth paragraph of section 2 of the act of June 13, 1898, if the proceeds thereof are not for the pecuniary profit of the club or association, or the proprietors or agents thereof, but are wholly devoted to some charitable or public object and to the payment of the expenses of the club or organization giving the entertainments.

In my opinion, the exhibitions thus given by a local club are not such "exhibitions or shows for money" as are contemplated by the statute.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. E. J. HILL, *Norwalk, Conn.*

(20880.)

Special tax—Exhibitions—Local organizations.

Where a company whose business it is to go from place to place giving exhibitions for money is engaged by a Young Men's Christian Association or any other local organization to give such an exhibition, it is not the local organization or association that is required to pay the special tax; nor is a lyceum bureau, which is not the proprietor or agent of such company, but merely makes a contract with the local organization for such company, subject to such tax.—The proprietor or agent of such company is the person who should make return to the collector of the district in any State in which the company thus appears and exhibits and pay the special tax and take out the requisite stamp for that State.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 17, 1899.

SIR: I have received your letter of the 9th instant inclosing the correspondence relating to the question of the special-tax liability of the Slayton Lyceum Bureau, of Chicago, under the eighth paragraph of section 2 of the act of June 13, 1898, on account of the business in which they are engaged, namely, furnishing "concert companies, readers, and lecturers for Young Men's Christian Associations, churches, and local societies, or private individuals, in the various towns and cities of this country, both East and West, at a fixed price."

The statute referred to requires the payment of special tax by "proprietors or agents of all * * * public exhibitions or shows for money." If the Slayton Lyceum Bureau is not the proprietor or agent of any of the theatrical companies or concert companies or other companies, traveling from place to place, presenting "exhibitions or shows for money," but simply makes contracts with Young Men's Christian Associations and other local societies for the appearance of these companies, under the auspices of such associations, it is not subject to special tax under this statute.

The suggestion made by this lyceum bureau, however, that it is the local association under whose auspices the theatrical company or concert company or other exhibition or show is presented that should pay the special tax required by the statute, is not accepted by this office as a correct view of the law.

The proprietor or agent of the show or exhibition should make return to the collector of the district, and pay the special tax, and take out the requisite stamp for the State in which the exhibition is to be given. The local society or organization engaging any company to give an exhibition or show is not to be regarded as the proprietor or agent thereof within the meaning of the statute.

Respectfully, yours,
Hon. WILLIAM E. MASON, *United States Senate.*

G. W. WILSON, *Commissioner.*

(20951.)

Special tax—Exhibition or show.

Singing by one person, with piano accompaniment, though an admission price is charged thereto, is not an exhibition or show within the meaning of the eighth paragraph of section 2, act of June 13, 1898, and special tax is not required to be paid therefor.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 3, 1899.

SIR: Your letter of the 15th instant has been received, inclosing an affidavit made by Miss Adella Prentiss, relating to a vocal concert given by her, with piano accompaniment, in the city of Cleveland, "for which an admission charge was paid," and "which was not for any church or charitable object."

Her affidavit is accompanied by a brief from her counsel, in which it is argued that concerts do not come within the meaning of the words "exhibitions or shows," as they are contained in the eighth paragraph of section 2 of the act of June 13, 1898, on the ground that these words relate "only to things exhibited to the eye, to be seen, and not to lectures or vocal concerts which are addressed to the judgment, the culture, the taste, and intelligence of the audience."

This office declines to give such a limited construction as this to the language of the statute which requires that the proprietor or agent of all public exhibitions or shows for money shall be subject to the special tax. It is held that the proprietor or agent of a concert for money is required to pay the tax under that paragraph. But taking Webster's definition of a concert as a "musical entertainment in which several voices or instruments take part," the singing of Miss Prentiss alone, with an accompaniment on the piano, is not a concert in the correct meaning of the word; though it is an entertainment for money, it is no more an "exhibition or show," within the meaning of the statute, than is the delivery of a lecture (without picture illustrations) for money, in regard to which it has been held that the lecturer is not required to pay special tax.¹

Respectfully, yours, G. W. WILSON, *Commissioner.*

Mr. FRANK McCORD,

Collector Eighteenth District, Cleveland, Ohio.

¹Compilation of Decisions Rendered by the Commissioner of Internal Revenue under the War-Revenue Act of June 13, 1898 (January, 1899), page 152.

(21051.)

Special tax—Baseball games.

Baseball games given by college and amateur or local clubs are not such exhibitions as require payment of special tax. They are distinct from baseball exhibitions given by professional clubs as a regular business for money.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 24, 1899.

SIR: In reply to your letter of the 14th instant, concerning a series of baseball games given during the season by the various college and amateur or local clubs, which games are played in parks "inclosed by a high fence," and for which "an admission fee is charged at the entrance," you are hereby advised that, in the opinion of this office, it is not within the true intent and meaning of paragraph 8 of section 2 of the act of June 13, 1898, that special tax should be required to be paid for these baseball exhibitions. They are quite distinct and separate from the baseball exhibitions given by professional clubs as a regular business for money.

Respectfully, yours,
G. W. WILSON, *Commissioner.*
Mr. E. C. DUNCAN, *Collector Fourth District, Raleigh, N. C.*

(21191.)

Special tax—Side show of a circus.

The hundred-dollar special-tax stamp for a circus does not cover an entertainment given as a side show, for admission to which a price is charged additional to the cost of the circus ticket. A separate special-tax stamp must be taken out under the eighth paragraph of section 2, act of June 13, 1898, for such side show.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 25, 1899.

SIR: In reply to your letter of the 19th instant, you are hereby advised that if the side show connected with Buffalo Bill's Wild West exhibition is, as it is understood, a separate show from the main exhibition, by reason of the fact that the public who pay for admission to the main exhibition are not entitled to admission to the side show on their tickets, but are required to pay an additional sum for the side show, a separate special-tax stamp must be required to be taken out for the latter show under the eighth paragraph of section 2 of the act of June 13, 1898.

Respectfully, yours,
G. W. WILSON, *Commissioner.*
Mr. JOS. P. QUAD, *Chester, Pa.*

(21317.)

Special tax—Italian and German bands visiting saloons.

Special tax is not required to be paid by bands of music going from place to place and playing from time to time in liquor saloons.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 27, 1899.

SIR: Your letter of the 22d instant has been received, concerning traveling Italian or German bands which visit liquor saloons and "give entertainments."

If the proprietor of any such saloon regularly employs one of these bands to play in his establishment, he should be required to pay special tax under the eighth paragraph of section 2 of the act of June 13, 1898. But if it is only occasionally (say once or twice a week) that this is done, or if they come regularly, but are not employed by the proprietor and simply raise their own collection of such trifling sums as may be given them, you need not take any action looking to the exaction of special tax therefor.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. J. M. KEMBLE, *Collector Fourth District, Burlington, Iowa.*

(21319.)

Special tax—Concert hall at a summer resort.

The special tax of \$10 only is required to be paid for the hall in the grounds of a summer resort where performances are given from time to time during the summer season. Though these grounds are within the limits of a city of a population of 25,000 or more, such hall is not a theater building or concert hall within the meaning of the sixth paragraph of section 2, act of June 13, 1898, for which the \$100 special-tax stamp is required to be taken out.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 27, 1899.

SIR: Your letter of the 20th instant has been received, inclosing a letter from the president of the Little Rock Traction and Electric Company, submitting the question whether the special tax of \$100 or of \$10 should be paid for their concert hall on the grounds of their summer resort known as Glenwood Park, which "covers, perhaps, an acre and a half of ground." You say:

Refreshments are served on the grounds; a nominal admittance is charged; performances are given nearly every night during the summer months, the building not being constructed with a view of giving

exhibitions in winter by traveling companies and actors in specialties. This resort is within the city limits, a city of more than 25,000 inhabitants.

In the opinion of this office, the hall in these grounds, used during the summer for performances, is not such a theater building or concert hall as is contemplated by the sixth paragraph of section 2 of the act of June 13, 1898, and the only special tax required therefor is \$10 under paragraph 8 of that section.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. H. M. REMMEL, *Collector Internal Revenue, Little Rock, Ark.*

(21366.)

Entertainments—Sunday-school assembly.

Special tax not required for entertainments given by church or Sunday-school assemblies on grounds to which an admission price is charged.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 6, 1899.

SIR: The assistant United States attorney at Madison, Wis., Henry T. Sheldon, has submitted to this office the question of the special-tax liability of the Monona Lake Sunday School Assembly, a corporation which, he states, maintains and carries on every summer a camp meeting of Sunday-school and church members on grounds owned by themselves near the city of Madison, charging "an admission fee of 25 cents for entrance to the grounds," and giving "every day during the session, and often twice a day, * * * entertainments on the grounds, consisting of lectures, speeches, concerts, etc., to which no admission is charged to those on the ground." He further states that "the performers at these entertainments are paid by the corporation," and that "the admission fee charged at the gate to the grounds goes simply to pay the expenses of maintaining the grounds and running the camp meeting."

Upon this statement of facts, it is held by this office that the Monona Lake Sunday School Assembly is not to be regarded as the proprietor of a public exhibition or show for money within the meaning and intent of the eighth paragraph of section 2 of the act of June 13, 1898; and you may, therefore, withdraw the demand notice which you have served upon the president of this corporation for payment of special tax under that paragraph.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. JAMES G. MONAHAN, *Collector Second District, Madison, Wis.*

(21522.)

Special tax—Bands of music in restaurants.

Special tax is not required to be paid by proprietors of restaurants or cafés for employing bands of music or orchestras during meal hours for the benefit of their patrons, no admission price being charged and no performance or exhibition being given in connection therewith. Former rulings tending to a different conclusion modified in accordance herewith.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 22, 1899.

SIR: Your letter of the 17th instant has been received, submitting the question whether proprietors of restaurants are required to pay special tax under the eighth paragraph of section 2 of the act of June 13, 1898, on account of hiring bands of music to play "during meal hours for the benefit of the patrons of such restaurants."

Among the several cases of this kind to which you refer, you mention the following:

At the Drexel Café, at the northeast corner of Thirty-ninth street and Cottage Grove avenue, Chicago, the proprietors conduct a lunch room, also a bar. During the summer months they have a roof garden, which is open for the comfort of its patrons, and where an orchestra plays in the evening instead of downstairs in the restaurant—that is, if the weather is fine. If the weather is not suitable, they play in the restaurant during meal hours in the evening. No admission is charged by the proprietors of said café, neither do they conduct any performance.

In view of the facts that, in this case and the others which you describe, there is no charge for admission and no stage performance or exhibition is given, it is the opinion of this office that special tax can not be required to be paid therefor within the true intent and meaning of the statute imposing special tax on "public exhibitions or shows for money."

Any rulings heretofore given tending to a different conclusion are to be regarded as modified in accordance herewith.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. F. E. COYNE, *Collector First District, Chicago, Ill.*

(21559.)

Special tax—Free entertainment.

An entertainment given by a railway company, to which no admission price is charged, is not regarded as an exhibition or show for money under the eighth paragraph of section 2, act of June 13, 1898.—Contrary ruling revoked.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 30, 1899.

SIR: Your letter of the 26th instant has been received, concerning the East Lake Company, which has a park connected with the town of

East Lake "by a street railway line, both the park and street railway line being owned by the same company."

As to this park you say:

There is a large lake, a boathouse, and a pavilion or hall in which summer theatrical companies perform. The East Lake Company also advertise sacred concerts there for Sundays, and occasionally other attractions, to which there is no admission charged, the purpose and object being to increase the traffic on the street railway line.

Under the ruling to which you refer (No. 20064¹), the East Lake Company would be required to pay special tax for this place of entertainment under paragraph 8 of section 2 of the act of June 13, 1898, although there is no price of admission charged thereto. But that is an extreme ruling, which, upon further consideration, this office is constrained to hold not to be warranted by the language of the statute relating to "public exhibitions or shows for money;" and it is accordingly hereby revoked.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. J. H. BINGHAM, *Collector Internal Revenue, Birmingham, Ala.*

(21636.)

Special tax—Concerts in liquor saloons.

Special tax is not required to be paid for bands of music playing in saloons to which no price of admission is charged, and where persons visiting such places are not under any obligation to buy, even though the proprietors "expect people who go there to buy drinks."

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 28, 1899.

SIR: Your letter of the 20th instant has been received, stating that in a number of saloons in your district "the proprietors have a band of music playing during certain parts of the day and evening;" that "they do not charge admission to their places, but expect people who go there to buy drinks;" and that "sometimes these bands are in summer gardens and sometimes in a pavilion and sometimes in the saloon proper. You ask whether the proprietors of these saloons, "where a band of music is hired to play for the patrons, and where no admission is charged," are held to be liable to special tax under paragraph 8 of section 2 of the act of June 13, 1898.

You are hereby advised that special tax is not required to be paid therefor, and that you may apply to such cases the ruling 21522 (page 133), to which you refer; but this ruling is not to be applied to

¹Compilation of Decisions Rendered by the Commissioner of Internal Revenue under the War-Revenue Act of June 13, 1898 (January, 1899), page 154.

the different case which you describe of a "saloon or beer garden where the party going in such place is obliged to buy a cigar at the entrance." This is in effect a charge for admission; and special tax should be paid for a concert or exhibition given in such place.

Respectfully, yours, G. W. WILSON, *Commissioner*.

Mr. F. E. COYNE, *Collector First District, Chicago, Ill.*

(21665.)

Special tax—County fair associations.

In the absence of an express statutory provision exempting county fair associations from special tax for fairs given by them, it is held that the tax must be paid under the eighth paragraph of section 2, act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 10, 1899.

SIR: Your letter of the 26th ultimo has been received, relating to the question of the special-tax liability of county fair associations (which, you say, are in Minnesota "quasi public corporations") for the fairs given by them each year.

You express the opinion "that they do not come within the scope of the act of 1898." The eighth paragraph of the act of June 13, 1898, however, requires that a special tax of \$10 shall be paid for public exhibitions or shows for money; and as this office is unable to find sufficient ground for holding that a county fair, for admission to which the public are required to pay a stated price, is not an exhibition for money, it has held that special tax must be required to be paid therefor, reckoned from the first day of the month in which such exhibition is given to the first day of July following, at the rate of \$10 for the year beginning July 1 in the calendar year.

In the absence of an express statutory provision exempting county fair associations from this tax, a contrary ruling would not, it seems to me, be well founded except as to such of these associations as are shown to be State institutions.

It is not understood that under the laws of the State of Minnesota any of these associations there are State agencies.

Respectfully, yours,

ROBT. WILLIAMS, Jr., *Acting Commissioner*.

Mr. C. W. SOMERBY, *Assistant Attorney-General, St. Paul, Minn.*

EXPRESS COMPANIES.

(See BILLS OF LADING; RECEIPTS; and DECISION 21709, p. 67.)

INSURANCE.

(See also DECISIONS 20551, p. 71; 21110, p. 274.)

(20677.)

Stamp tax on reinsurance policies—Opinion of Attorney-General.

No tax accrues on a contract between life insurance companies for reinsurance upon any life or lives.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 6, 1899.

The appended opinion of the honorable Attorney-General is promulgated for the information and guidance of the Internal-Revenue Service.

N. B. SCOTT, *Commissioner.*

DEPARTMENT OF JUSTICE,
Washington, D. C., February 3, 1899.

The SECRETARY OF THE TREASURY.

SIR: I have the honor to acknowledge the receipt of yours of October 18, 1898, asking my opinion as to whether, under the provisions of the war-revenue act, what are called reinsurance policies, issued by insurance companies, are required to be stamped.

The Commissioner of Internal Revenue, in his letter of October 12, 1898, to you upon this subject, and which you inclose, says:

"This question of reinsurance relates only to the assumption by one insurance company of a part of a risk taken by another on receiving a proportionate part of the premium that was originally paid. It is of no interest to the beneficiary or the party primarily insured, except perhaps as the double insurance may contribute to his benefit in case of the insolvency of the company with which he originally contracted."

And in the statement filed by the representatives of the insurance companies in this matter it is said that a reinsurance policy "is substantially an agreement between two life companies sharing, according to the terms of the contract, the risk which, prior to such agreement, was being carried by one of the companies."

The provision of the act of June 13, 1898, applicable to this subject is the paragraph of Schedule A under the head of "Insurance (life)," and is as follows:

"Policy of insurance, or other instrument, by whatever name the same shall be called, *whereby any insurance shall hereafter be made upon any life or lives*, for each one hundred dollars or fractional part thereof, eight cents on the amount insured."

Upon the facts given by the Commissioner, which appear to be in harmony with those furnished by the representatives of the insurance companies, these contracts, which are made exclusively between the insurance companies themselves, and after the original policy of life insurance to the individual has been issued, could not be construed

as instruments whereby insurance is made upon life or lives. The insurance upon the life is made by the original policy or instrument which is issued as evidence of the contract between the insurance company and the assured. After this contract is completed, as I understand it, insurance companies, in order to divide the risk, adopt this plan of reinsurance, as they call it, by which some company other than that which issued the policy, in consideration of a portion of the premium, agrees to assume part of the risk, and it is to evidence this contract that what are called reinsurance policies are issued, not to the assured in the original policy, but to the company which is the original insurer. To require a stamp upon such a contract after the original policy issued to the assured has been duly stamped would be, in effect, to levy a double tax on a single transaction for life insurance, which I do not think the law contemplates and which its proper construction will not sustain.

Further than this, as I have stated before, there is no insurance made upon any life or lives by these contracts between the insurance companies. The assured is no party to them and has no interest in them, except, perhaps, in so far as security for the payment of the policy may be increased. But I do not think this sufficient to subject contracts such as are above described to stamp taxes.

Very respectfully,

JAMES E. BOYD,
Assistant Attorney-General.

Approved:

JOHN W. GRIGGS, *Attorney-General.*

(20726.)

Stamp tax—Life insurance policies.

Change of beneficiaries in life insurance policies—When taxable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 20, 1899.

SIR: This office is in receipt of a letter, bearing date of February 2, 1899, from Hubert Cillis, vice-president and secretary of the Germania Life Insurance Company, 20 Nassau street, New York City, in which he states the following:

In July of last year the following inquiry was made to this office: "When a policy of life insurance, say for \$5,000, is assigned to secure a note of \$500, what amount of revenue stamps is required in such case?"

The opinion expressed by this office was as follows:

"When a policy of life insurance is assigned as collateral security for a loan exceeding \$1,000, it should be stamped as a pledge according to the amount of the debt secured and not according to the face of the policy."

From this opinion, we have drawn the inference that where an assignment of such a policy is absolute in form, to be valid it must be stamped the same as the original instrument—that is, 8 cents per \$1,000 of insurance or any fraction thereof.

The inference drawn by this gentleman is correct, and in regard to assignments of life insurance policies that are subject to taxation, you will please inform him that this office has reconsidered its former ruling wherein it was held that every change of a beneficiary in a life insurance policy would subject the policy to a taxation of 8 cents for each \$100 of value of the policy.

Upon this reconsideration this office now holds that a change of beneficiary in these policies is not subject to taxation unless the same is made for a valuable consideration.

The following changes of beneficiaries are not held to be subject to taxation by this office, viz: The life of A is insured and the policy is made payable to A's heirs or personal representatives. A is a single man and marries, and requests the company to name his wife as beneficiary in the policy, instead of making it payable to his heirs or personal representatives. This change is not subject to taxation.

Another instance: In the above case, should A's wife die before he does and should he marry again and request that his second wife be named as the beneficiary under the policy, no tax would accrue. Should, however, an absolute assignment of the policy be made to another person, or should the beneficiary named in the policy become placed in such a position by reason of some valuable consideration, this change would be subject to taxation at the same rate as that imposed upon the policy originally.

You will please inform Mr. Cillis of this reconsidered decision of this office, and further, that the forms of assignment which he incloses (one "original" and one "duplicate") are subject to tax or are not subject to tax, according to the manner in which they are used in relation to the above ruling. In both these forms (original and duplicate) appears a power of attorney, and this, in the original, is subject to a tax of 25 cents in addition to the tax on the assignment, in case it is such an assignment as is subject to tax. The duplicate is not subject to taxation in any event if the words "original duly stamped" are added.

Respectfully, yours, N. B. SCOTT, *Commissioner.*
Mr. CHAS. H. TREAT, *Collector Second District, New York, N. Y.*

(20781.)

Stamp tax—Guaranty and fidelity insurance policies.

When the policies should be stamped as policies of insurance and not as bonds.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 1, 1899.

SIR: This office is in receipt of your letter of February 7, 1899, in which you present for consideration the question of the amount of

internal-revenue stamps required to be affixed to one of your fidelity insurance contracts running to railroads and other corporations, whereby you insure them against loss on account of the dishonesty or culpable negligence of employees.

You inclose a sample copy of such a contract, together with schedule thereto attached. On this schedule will appear the number, name, position, and location of each employee in the service at the time of the execution and delivery of the contract. Opposite the names will appear the amounts for which they are respectively bonded or insured. By the first condition of the contract provision is made for the employer to notify your company of the appointment of any new employee and for your acceptance of the risk so as to cover such new employee. This is all done by use of Forms 70 and 71, copies of which are also inclosed by you. Under Form 70 the company notifies you of the name of a new employee to be covered by the insurance contract issued by you. When you accept this new risk you execute Form 71 and send it to the insured company, and the question is, the proper stamping of these instruments.

Your brief has been carefully considered, and you are informed that this office takes the following position in regard to the taxability of these instruments:

First. This office regards the original contract issued by you to be in the nature of a policy of insurance alone. It should be stamped to the amount of one-half of 1 cent for each \$1 of premium charged by your company. It does not require a 50-cent stamp in any event.

Second. When an additional risk is presented to your company under Form 70 and accepted under Form 71, the latter should be stamped in the same manner as the original contract of insurance. Form 71 then becomes a part of the original contract and is covered in under it. When the original contract is properly stamped and Form 71 is also properly stamped, the requirements of Schedule A have been fully complied with.

This office looks upon these instruments, not in the nature of bonds which require a 50-cent stamp, but rather in the nature of insurance policies, which are required to be stamped under the paragraph relating to insurance (casualty, fidelity, and guaranty) in Schedule A.

No one is a party to these instruments in the nature of a principal in such a way as would require them to be stamped with a 50-cent stamp. In other words, it is not the bond of a principal, said principal becoming the principal obligor on the bond with your company as surety, but is in the nature of an insurance policy, similar in law to life insurance policies and fire insurance policies, the difference being only in the risk assumed.

Respectfully, yours,

G. W. WILSON, *Commissioner*.

Mr. GEORGE A. VANDEVEER,

General Solicitor National Surety Company, New York, N. Y.

(20789.)

Stamp tax—Opinion of the Attorney-General on reinsurance policies.

No tax accrues on a contract between life, fire, and marine insurance companies for reinsurance.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 4, 1899.

SIR: I inclose herewith copy of an opinion rendered by the Attorney-General in regard to reinsurance policies.

This opinion, you will notice, is supplementary to the one rendered by the Attorney-General under date of February 3, 1899, published under date of February 6, 1899 (No. 20677, page 136).

You will observe that the Attorney-General applies his former opinion, which related only to reinsurance of life insurance policies, to reinsurance by fire and marine companies as well, thus placing life, fire, and marine insurance companies on the same basis.

Please communicate the substance of this decision to the Board of Fire Underwriters in New York, and as far as possible to all interested parties.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Mr. CHARLES H. TREAT,
Collector Internal Revenue, New York, N. Y.

DEPARTMENT OF JUSTICE,
Washington, D. C., March 2, 1899.

THE SECRETARY OF THE TREASURY.

SIR: I have the honor to acknowledge the receipt of yours of February 10 relative to the scope of the opinion recently rendered by me, in response to your request concerning what are called "reinsurance policies," whether or not such policies are required to be stamped under the provisions of Schedule A of the war-revenue act.

You state in your letter that the Commissioner of Internal Revenue calls attention to the fact that the opinion relates only to the tax on reinsurance of life policies, whereas an opinion was requested on the reinsurance of all kinds of policies mentioned in Schedule A of said act, and you inquire whether the opinion which I have rendered in regard to life insurance will cover the reinsurance of all other kinds mentioned in the act.

The opinion which I rendered was based upon a state of facts which I copy from the letter of the Commissioner of Internal Revenue, as follows:

"This question of reinsurance relates only to the assumption by one insurance company of a part of a risk taken by another on receiving a proportionate part of the premium that was originally paid. It is of no interest to the beneficiary, or the party primarily insured, except, perhaps, as the double insurance may contribute to his benefit in case of the insolvency of the company with which he originally contracted."

In the opinion which I gave I advised you that such transactions between life insurance companies, after the policy of insurance had been issued to an individual, were not taxable under the provisions of the law. The same principle applies to fire and marine insurance companies, for the law is substantially the same as regards the tax upon all classes of insurance policies. It was the purpose of the law to tax the policy by which the insurance is made, either life, fire, or marine, and there is no reasonable construction of it which would tax a transaction between the insurance companies themselves by which a risk taken by a policy already issued is divided.

Respectfully,

JAMES E. BOYD,
Assistant Attorney-General.

Approved:

JOHN W. GRIGGS, *Attorney-General.*

(21048.)

Stamp tax—Life insurance policies.

Circumstances under which policies of life insurance issued in lieu of canceled policies, surrendered for change in class of insurance and amount of insurance, are not taxable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 21, 1899.

SIR: This office is in receipt of your letter of April 15, 1899, written in reference to certain questions of taxation accruing on surrendered policies of life insurance, and in reply you are informed that the following are the rulings of this office on policies of life insurance issued in exchange for surrendered policies:

1. A policy is surrendered and the company issues in exchange therefor a new policy of paid-up insurance.

Provision for such paid-up insurance is made in the original contract, and it is stated in the paid-up policy that it is issued "in consideration of the representations made in the application for the paid-up policy and of the surrender of the original policy."

Except as to amount assured and payment of premiums, the original conditions remain unchanged.

No taxation accrues upon this paid-up policy.

2. A policy is surrendered to be rewritten at the home office for, say, one-half the original amount, calling for one-half the original premium, all the other conditions of the policy remaining unchanged.

No taxation accrues upon this rewritten policy.

3. The policy is surrendered in exchange for a new policy on one of the other plans of the company.

The original amount either remains unchanged or is reduced.

The value of the original policy is used in reduction of the premiums on the new one. There is no change in the beneficiary.

Under these circumstances no taxation accrues upon this new policy.

These rulings are made on the theory that no new insurance is

effected; it is simply a change in condition or a reduction of the amount of insurance in force, and as no new insurance is written, no taxation accrues.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. GEORGE W. HUBBELL, *New York, N. Y.*

(21227.)

Stamp tax—Life-insurance policies.

Several conditions under which a policy of life insurance, issued in lieu of a surrendered policy, is not subject to taxation.—Instructions in regard to indorsing the new policy to show why stamps are not affixed.—Change of beneficiaries without consideration not taxable; when made for a valuable consideration, taxable as assignments.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 2, 1899.

SIR: Under date of May 23, 1899, J. U. Markell, deputy collector in charge, submitted to this office a letter, under date of May 24, from F. Albert Kurtz, commissioner of the insurance department of Maryland, in which he submits five questions in regard to the taxation accruing upon policies of life insurance, and requests a ruling from this office upon the several situations presented.

1. If a running policy is surrendered for a paid-up policy, does the latter require to be stamped?

It does not, if the latter policy is not for a greater amount of insurance than is covered by the running policy.

2. If a policy, say for \$10,000, were reduced to \$5,000, would the policy of \$5,000 need to be stamped?

No.

3. If a policy were changed to another plan of insurance, same number and date as the original policy, would stamps be required on the new policy?

No, if the new policy does not cover any new insurance not heretofore written.

4. If a term policy were converted into a life or endowment policy, and it not being convenient to pay up the difference in premium to date the policy back, the new policy was dated the time of the change, would the new policy need to be stamped?

This is replied to in the answer to question No. 3.

5. Would an assignment, changing the name of the beneficiary, or rewriting a policy of same number and date for the same purpose, upon a written request of the insured, require the same stamps as the original policy?

This office considers that a change of beneficiary, if made for a valuable consideration, is subject to taxation as an assignment of the policy, and should be stamped at the same rate as the policy was stamped or would be stamped if issued at the time of the change of

beneficiary. This office further holds that when a change of beneficiary is made and no valuable consideration passes, no taxation accrues. This usually arises in cases where policies are made payable to the heirs or personal representatives of the insured and the insured directs that the policy be made payable to his wife, mother, or child, or some other relative, there being prima facie no valuable consideration passing between the parties for this change.

If a policy of insurance is rewritten and bears the same number and date of the original policy, and is similar in every respect to the original policy, no taxation accrues; it is essentially a copy and should be so indorsed.

Whenever a policy is issued under any of the above circumstances and no taxation accrues under the rulings made, the new policy should show upon its face, by an indorsement, that the policy in lieu of which the new one is issued was duly stamped, or whatever the state of facts may be attending its issuance; otherwise it would be impossible to tell from the face of the instrument that it was not new insurance. If, for instance, under question numbered 1, a paid-up policy is issued in lieu of a surrendered running policy, the paid-up policy should show upon its face the circumstances attending its issuance, such as, "This policy is issued in lieu of policy numbered ———, dated ———, for ——— dollars, which was duly stamped," or whatever the facts are.

If no indorsement appears, it would be impossible to tell from the face of the instrument that it was not a taxable document when issued. It would, without a proper indorsement, in so far as the document alone is concerned, be a taxable document, and it should, therefore, show upon its face why it is not such a one.

The indorsement should be sufficient to inform interested parties of the exact facts; its precise form would necessarily vary in different cases, and, therefore, no set of words would be applicable to all situations; each situation should govern.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,

Acting Commissioner.

Mr. B. F. PARLETT, *Collector Internal Revenue, Baltimore, Md.*

(21229.)

Stamp tax—Reinsurance of fire-insurance policies.

When policies of reinsurance of fire-insurance policies are written in the United States and the policy which is reinsured is not subject to taxation by reason of being issued in a foreign country, the reinsurance policy should be stamped.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., June 3, 1899.

SIR: This office is in receipt of your letter of May 20, 1899, in which you ask to be advised whether it is necessary to affix documentary

stamps to a policy of reinsurance issued in the United States reinsuring a policy written in Canada in order to insure the said policy of reinsurance being held good in a court of law in the United States; also, if it would make any difference whether the property insured was situated in Canada or in the United States.

In reply, you are informed that this office holds that a policy of reinsurance issued in the United States reinsuring a policy written in Canada is subject to taxation, and this is the ruling whether the property insured is situated in Canada or in the United States. This ruling is made upon the presumption that the original policy is such a one as is not subject to taxation under the laws of the United States. This reinsurance is, in so far as the internal-revenue law of the United States is concerned, an original contract. Presuming that the original policy is such a one as is not subject to taxation under the internal-revenue laws of the United States, the reinsurance policy becomes, in the opinion of this office, under the internal-revenue laws, an original policy of insurance and taxable as such.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. C. C. FOSTER,
Secretary Western Assurance Company, Toronto, Canada.

(21618.)

Stamp tax—Annuity contracts.

Annuities payable either during life or a term of years not taxable under Schedule A, act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 20, 1899.

GENTLEMEN: Referring to your letter and brief of the 11th ultimo, relative to the proposed taxation under Schedule A, act of June 13, 1898, of annuity contracts made by certain life-insurance companies, I have to advise you as follows:

In a ruling heretofore made by this office, but not printed, it was held that annuity contracts were taxable under the broad terms of the provision in Schedule A relating to life insurance, but on a careful reconsideration of the whole subject the conclusion has been reached that annuities, payable either during life or for a term of years, can not properly be included under the provisions of Schedule A relating to life insurance, and are not otherwise taxable under said schedule, and it is so held.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Messrs. BRITTON & GRAY, *Washington, D. C.*

(21646.)

Stamp tax—Installment accident insurance policies.

Policies of accident insurance, whereon the premiums are payable in installments, should be stamped, when issued, on a basis of the full premium charged for the whole term. The policy can not be stamped on a basis of the first premium paid and the application stamped as succeeding premiums are paid.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 9, 1899.

SIR: This office has recently determined a question in regard to the taxation of installment policies of accident insurance issued by the Standard Life & Accident Insurance Company, of Detroit, Mich., * * * which is also applicable to similar policies of insurance issued by the Travellers' Life & Accident Insurance Company, of Hartford, Conn.

The statement of facts upon which the ruling is based is as follows: The policies issued by the Travellers' Life & Accident Insurance Company, of Hartford, Conn., upon which this office specifically rules are policies insuring against accidental death or injuries, and also giving weekly indemnity for loss of time caused by such accidental injuries. The contract evidencing this insurance is for the term of one year, and the premiums are payable in two, two, three, and five months. It is expressly agreed in the contract issued that the premiums paid are for separate and independent contracts for the consecutive periods above named, and each of these payments shall apply to only its corresponding insurance period. It is contended that if the company pays the tax on the entire premium chargeable upon the policy when it is issued, it pays a tax upon a large percentage of premium which it never collects, there being a corresponding amount of average delinquency in transacting the business. The Travellers' Insurance Company, therefore, wishes to pay tax only on the premium for the first two months when the policy is issued, and as the policy passes out of its hands at that time to stamp the application as the premiums for the succeeding period are paid.

In response to this request, it must be observed—

(1) That the law does not provide for the case of insurance premiums payable in installments.

(2) The instrument issued by this insurance company embodies four contracts embracing an entire year, and when made and issued tax accrues on the entire premium chargeable thereon for the period covered.

(3) Section 7 of the act of June 13, 1898, is as follows:

That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, any instrument, document, or paper of any kind or description whatsoever, without the same being duly stamped

for denoting the tax hereby imposed thereon, or without having thereupon an adhesive stamp to denote said tax, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than one hundred dollars, at the discretion of the court, and such instrument, document, or paper, as aforesaid, shall not be competent evidence in any court.

The above includes all contracts of insurance issued, as well as all other documents taxable under Schedule A, and there is absolutely no authority to stamp an instrument so issued, except to the full amount due under the contract or contracts covered therein, whether the premiums are made payable in installments or otherwise.

The proposition of the company to pay tax only on the first premium due when the contract of insurance is issued by placing a stamp thereon corresponding thereto, and pay tax on the subsequent premiums when paid by placing the stamp for the same on the *application* for insurance, is inadmissible, because thereby the stamping of an instrument not required by law to be stamped would be authorized.

If this insurance company desires to stamp each contract by itself, it must issue four different contracts during the year, and in that case they could stamp such contracts as they are issued; otherwise, a stamp will be required equal to the tax on the amount ultimately chargeable for premium in every instrument issued, and the stamps must be affixed at the time of issue in accordance with section 7 of the act of June 13, 1898.

The application of this company to stamp its contracts in any other way is denied. Please inform the company of the ruling herein contained, that it may conform to the requirements herein set forth.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,

Acting Commissioner.

MR. THOMAS A. LAKE, *Collector Internal Revenue, Hartford, Conn*

(21779.)

Stamp tax—Exemption of life-insurance policies.

Classes of life-insurance companies whose policies are exempt if the companies are not conducted for profit.—What constitutes, *prima facie*, being "conducted for profit."

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., November 16, 1899.

GENTLEMEN: I am in receipt of your letter of August 19, 1899, in which you inclose a brief, wherein your views are submitted in regard to the question of taxation on policies of life insurance issued by mutual life-insurance companies doing a purely assessment business *not for profit*. This brief is submitted in the matter of the applica-

tion of the Bankers' Life Association, of Des Moines, Iowa, for exemption from the war-revenue tax in regard to its policies of life insurance.

You state that the law in imposing a tax upon policies of life insurance exempts from the operation thereof certain specified societies "organized and conducted solely by the members thereof for the exclusive benefit of its members, and not for profit."

You state further that "it is clear that this exception can only apply to mutual companies, because they alone are organized and conducted solely by the members thereof for the exclusive benefit of their members," and "it is equally clear that the exemption can not apply to all mutual associations, but only to those organized and conducted not for profit. * * * Having ascertained, then, that an association is mutual, the sole remaining question is, Is it organized and conducted not for profit?" Then follows your argument as to determining the question of whether or not the association is conducted for profit.

This office quite agrees with you in the manner of determining the question of profit; but that part of your brief first above quoted assumes a premise not borne out by the provisions of the paragraph in Schedule A relating to life insurance. In other words, you assume that the paragraph in question includes mutual life-insurance companies *per se*. Upon examination of said paragraph you will find that no such class of companies is referred to. It relates to policies of insurance issued by—

First. Fraternal societies or orders.

Second. Beneficiary societies or orders.

Third. Farmers' purely local cooperative companies or associations.

Fourth. Employees' relief associations operated on the lodge system or local cooperative plan.

It is only policies of life insurance issued by the above classes or associations that can be exempt from taxation; and the further restriction is applied to the above-named associations that they must be such organizations as are conducted solely by the members thereof for the exclusive benefit of their members, and not for profit.

I am of the opinion that it was the intention of Congress to exempt from taxation policies of life insurance issued by fraternal societies or orders, and beneficiary societies or orders which are operated on plans similar to the lodge or ritualistic form.

It surely can not be said that a mutual life-insurance company is a fraternal society or order; nor can it be said that a mutual life-insurance company is a beneficiary society or order, although fraternal and beneficiary societies may be mutual. I can not, therefore, agree with you in your premise, wherein you state that it is clear that the exemptions can only apply to mutual companies.

The paragraph in Schedule A can only apply to the classes of insurance companies specifically set forth, none of which are known in the insurance world as mutual insurance companies *per se*.

Although they may have features of mutuality, they are required to have other features not common to mutual insurance companies.

It will be noticed that the proviso in the paragraph in Schedule A relating to life insurance is very different from the proviso in the paragraph of Schedule A relating to fire insurance. In the proviso in the paragraph relating to fire insurance mutual fire-insurance companies are specifically mentioned. It will be seen further that in the paragraph relating to casualty, fidelity, and guaranty companies of insurance, there are no exempted classes. The Bankers' Life Association, of Des Moines, Iowa, is not one of the class of companies mentioned in the paragraph. It is not a fraternal society or order. It is not a beneficiary society or order. It is not a farmers' purely local cooperative company. It is not an employees' relief association; nor is it operated on the lodge system or local cooperative plan. Said association would, in order to be exempt, have to come within the classes specified, and, further, it would have to be operated on the lodge system or local cooperative plan. The Bankers' Life Association can not be included within the above requirements.

I am, therefore, of the opinion, and so hold, that the policies of life insurance issued by the Bankers' Life Association are subject to taxation.

While passing upon the question of taxation of these policies, my views in regard to the question of profit, and what is contemplated by the phrase "organized and conducted not for profit," are herewith set forth.

Presuming that a company comes within one of the classes specifically set forth, it then has to have a further test applied to it as to whether or not it is conducted for profit.

As to the plan of organization and the method of doing business, the companies specifically set forth in the paragraph are divided into two general classes—those which collect premiums in advance, and those wherein the premium is paid by assessing their members for losses which have actually occurred.

This office holds that all insurance companies that are doing business on the old-line or fixed-premium plan, where policies are issued for a given, definite, fixed, or stated premium payable or capable of being estimated in advance, in so far as determining the question of taxation on their policies is concerned, are organized and conducted for profit, whether the premium is paid by assessment or not. The association, when it collects a premium under this plan, undertakes to carry a risk for the price fixed and agreed upon with the insured, and this amount must be paid, no matter what it actually costs the association to carry the risk.

The other class of companies does a business on the assessment plan, which is a sum specifically levied upon a fixed and definite plan within the limit of the companies' or societies' fundamental law or

organization, to pay losses, or losses and expenses incurred. (Joyce on Insurance, vol. 2, sec. 1245.)

An association coming within the exempted classes which is organized and does business on the plan of levying a sum upon its members to pay losses, or losses and expenses incurred, is *prima facie* not doing business for profit. This is in cases where the assessments are made to provide for the payment of losses as they occur.

Such companies as make assessments based upon fixed premiums, to be collected at regular intervals, without regard to whether or not a loss actually occurs, are companies that are, in the opinion of this office, *prima facie* conducted for profit.

From the above, this office holds that the proviso in the paragraph, relating to the question of profit, can only apply to societies or associations which collect funds for the payment of losses by assessment upon their members, and in whose contract no provision is made for any returns to the policy holder before a death or a loss occurs.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Messrs. CARR & PARKER, *Attorneys at Law, Des Moines, Iowa*.

INTERNAL-REVENUE STAMPS.

(20875.)

Schedule A—Refunding.

Evidence required in support of claims for amounts paid for adhesive stamps used in error or excess.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 16, 1899.

SIR: In all claims for the refunding of amounts paid for adhesive documentary or proprietary stamps used in error or in excess it should be clearly stated, under oath, who paid for the stamps, whether they were purchased at a discount or at the full face-value, and whether the party in whose name the claim is made has been reimbursed for the stamps by any person or persons. * * *

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. B. F. PARLETT, *Collector Internal Revenue, Baltimore, Md.*

(21560.)

Redemption of unused documentary stamps.

Opinion of the Attorney-General as to the power of the Commissioner of Internal Revenue to redeem unused documentary stamps.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 31, 1899.

The appended opinion of the Attorney-General, in relation to the power of the Commissioner of Internal Revenue to redeem unused

documentary stamps, is published for the information of collectors of internal revenue and others concerned.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

DEPARTMENT OF JUSTICE,
Washington, D. C., August 19, 1899.

SIR: I have the honor to acknowledge the receipt of yours of the 17th of April, 1899, relative to the power of the Commissioner of Internal Revenue to redeem or exchange, under certain circumstances, documentary stamps issued under the provisions of the act of June 13, 1898, known as the war-revenue act. You ask this question:

“Whether the last proviso of section 17 of the act of March 1, 1879 (20 Stat., 327), which provides that from and after June 30, 1879, no allowance shall be made in any manner for documentary stamps other than for those of the denomination of 2 cents, is still in force.”

The case pending before the Commissioner of Internal Revenue for decision is based upon the following facts:

Maitland, Coppel & Co., of New York, purchased from the collector of internal revenue 31 adhesive documentary stamps of the denomination of \$1,000, respectively. At the time of the purchase of these stamps the purchasers were under the belief that \$31,000 worth of stamps were required upon a certain instrument which it was their duty to stamp. After the purchase, however, it was ascertained that \$30,000 was the correct amount of stamps required on the instrument, and thus one of the stamps of the denomination of \$1,000 was left in their hands unused. They have applied to the Commissioner for the redemption of this \$1,000 stamp.

Section 31 of the act of June 13, 1898, reads as follows:

“That all administrative, special, or stamp provisions of law, including the laws in relation to the assessment of taxes, not heretofore specifically repealed are hereby made applicable to this Act.”

The question, therefore, first presented is as to whether this provision of the war-revenue act makes applicable to the administration and enforcement of said act the proviso of section 17 of the act of March 1, 1879, above referred to.

It will be observed that the power vested in the Commissioner of Internal Revenue to redeem stamps issued under the laws in existence previous to the act of June 13, 1898, is derived from section 3426 of the Revised Statutes, in which this language will be found:

“The Commissioner of Internal Revenue may, upon the receipt of satisfactory evidence of the facts, make an allowance for or redeem such of the stamps issued under the provisions of this Title, or of any internal-revenue act, as may have been spoiled, destroyed, or rendered useless,” etc.

The authority to redeem documentary stamps was, by the act of July 12, 1876 (19 Stat., 88), confined to those of the denomination of 2 cents, and by the act of March 1, 1879 (20 Stat., 327), both of which latter acts were amendments of the original act, claims for allowance on account of stamps were required to be presented within three years, existing claims for the redemption of stamps other than 2-cent documentary stamps were required to be presented within one year, and after June 30, 1879, no allowance could be made in any manner

for documentary stamps other than those of the denomination of 2 cents.

It will be seen that all of these acts refer to documentary stamps issued under the provisions of Title XXXV of the Revised Statutes, and the legislation subsequent to the act first authorizing the redemption of such stamps resulted from the fact that documentary stamps issued under the provisions of said title gradually went out of use until those of the denomination of 2 cents alone were required at the time the amendatory acts were passed.

The question is, then, directly presented as to how far, if at all, such legislation, pertaining to a system of laws with reference to the issue and use of internal-revenue stamps provided for by said system, can affect a subsequent and independent act providing for the issue and use of internal-revenue stamps differing in many instances materially from those issued under the former legislation.

It will be ascertained in following up the legislation relative to the use of documentary stamps that the act of June 6, 1872 (sec. 36, 17 Stat., 256), provided for the repeal on and after October 31, 1872, of stamp taxes on instruments, except the stamp tax on bank checks, drafts, and orders, and that the law requiring the use of the 2-cent stamps was repealed by the act of March 3, 1883 (22 Stat., 488). Therefore, the laws under which the documentary stamps provided for by previous legislation were issued having been repealed, all the acts of Congress pertaining solely to the redemption of such stamps have become obsolete; and I, therefore, in answer to the question as to whether the last proviso of section 17 of the act of March 1, 1879 (20 Stat., 327), is still in force, advise you that it is not, nor is any of the legislation providing for the redemption of documentary stamps under Title XXXV of the Revised Statutes in force. Consequently, said proviso can in no way enter into the administration of the war-revenue act.

The only question, therefore, which remains to be considered is, whether the Commissioner of Internal Revenue is authorized under any circumstances to redeem documentary stamps issued under the provisions of the last-named act.

Section 321 of the Revised Statutes, in defining the duties of the Commissioner of Internal Revenue, says:

"The Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, shall have general superintendence of the assessment and collection of all duties and taxes now or hereafter imposed by any law providing internal revenue; and shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue."

By this law the Commissioner of Internal Revenue, under the direction of the Secretary of the Treasury, has the general management, supervision, and control of the assessment and collection of internal-revenue taxes. He has authority to give instructions and to make *regulations* such as may be necessary to carry out the general purposes of the law. It will be seen, therefore, that the general powers of the Commissioner pertaining to the assessment and collection of internal-revenue taxes are exceedingly broad and comprehensive. In addition to the powers thus granted under the general law, section 25 of the act of June 13, 1898, is as follows:

"That the Commissioner of Internal Revenue shall cause to be prepared for the payment of the taxes prescribed in this Act suitable

stamps denoting the tax on the document, article, or thing to which the same may be affixed, and he is authorized to prescribe such method for the cancellation of said stamps, as substitute for or in addition to the method provided in this Act, as he may deem expedient. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, is authorized to procure any of the stamps provided for in this Act by contract whenever such stamps can not be speedily prepared by the Bureau of Engraving and Printing; but this authority shall expire on the first day of July, eighteen hundred and ninety-nine. That the adhesive stamps used in the payment of the tax levied in Schedules A and B of this Act shall be furnished for sale by the several collectors of internal revenue, who shall sell and deliver them at their face value to all persons applying for the same, except officers or employees of the internal-revenue service: *Provided*, That such collectors may sell and deliver such stamps in quantities of not less than one hundred dollars of face value, with a discount of one per centum, except as otherwise provided in this Act. And he may, with the approval of the Secretary of the Treasury, make all needful rules and regulations for the proper enforcement of this Act."

The last clause of the section quoted confers upon the Commissioner, with the approval of the Secretary of the Treasury, the power to make all needful rules and regulations for the proper enforcement of the act. He is not only authorized to make regulations for the enforcement of the act, but such regulations as are needful for its *proper* enforcement, his authority in this respect being restrained only by the failure of the Secretary to approve such regulations as he may make.

It is a well-settled principle that a regulation made in pursuance of an act of Congress has the force of law. (*United States v. Eliason*, 16 Pet., 291; *ex parte Reed*, 100 U. S., 13; *United States v. Barrows et al.*, 10 Int. Rev. Rec., 86; *Harvey v. United States*, 3 Ct. Clms., 38.)

I think it may be well held as proper in carrying out the purposes of the act of June 13, 1898, that the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, has authority in his discretion to cause an unused documentary stamp in the hands of a purchaser to be redeemed. It is true that the act does not in express terms vest the Commissioner with this power, yet the great discretion which is given to him to make such rules and regulations as are needful for the proper enforcement of the act, in my opinion, includes every power which is necessary, not only to collect the taxes levied under the provisions of this act, but to so administer it as to deal justly with the citizen and taxpayer.

The war-revenue act, as is well known, was passed to meet an emergency. A war with a foreign nation made the raising of additional revenue for the Government's use a necessity. The act, though apparently hurriedly, and in some respects I may say unskillfully, drafted, still in my opinion is sufficiently explicit to indicate the purpose of the lawmakers not only to secure the collection of the taxes provided for it, but also to protect the taxpayer from an unequal or unjust enforcement of its provisions.

There is another view which I think can be safely taken, which is founded on a portion of section 3426, Revised Statutes, which does not seem to be affected by the repeal of the laws relating to documentary stamps issued under Title XXXV of the Revised Statutes, and that is the provision in said section extending the authority of the Commissioner of Internal Revenue to make allowance for the redemption of stamps issued under *any internal-revenue act*. If that portion of section 3426 which is rendered inoperative by reason of the acts repeal-

ing the laws authorizing the issue of documentary stamps under the provisions of said title is eliminated, there still remains enough of said section to read as follows:

"The Commissioner of Internal Revenue may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps issued under the provisions * * * of any internal-revenue act, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which, through mistake, may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected; and such allowance or redemption shall be made either by giving other stamps in lieu of the stamps so allowed for or redeemed, or by refunding the amount or value to the owner thereof, deducting therefrom, in case of repayment, the percentage, if any, allowed to the purchaser thereof; but no allowance or redemption shall be made in any case until the stamps so spoiled or rendered useless shall have been returned to the Commissioner of Internal Revenue, or until satisfactory proof has been made showing the reason why the same can not be so returned:" * * *

Consequently, although all laws for the redemption of documentary stamps issued under the provisions of Title XXXV are obsolete because the authority to issue such stamps is repealed, the power yet remains to redeem documentary stamps issued under another, though a subsequent, internal-revenue act. The act of June 13, 1898, is an internal-revenue act, and among the methods of raising revenue thereby is that providing for the use of documentary stamps. If, therefore, so much of section 3426 as I quote above is still the law, it becomes a part of the said act by virtue of section 31 of the same.

I deem it, therefore, entirely consistent with the terms of the act of June 13, 1898, considered in connection with powers conferred by previous legislation, to give it as my opinion that the Commissioner of Internal Revenue has authority, with the approval of the Secretary of the Treasury, to make suitable regulations looking to the redemption of unused documentary stamps issued under the provisions of said act, and, in the absence of such regulations, I advise you that, with the sanction of the Secretary of the Treasury, the Commissioner of Internal Revenue may, in any particular case, cause such unused stamp or stamps to be redeemed.

Respectfully, JAS. E. BOYD, *Acting Attorney-General.*
The SECRETARY OF THE TREASURY.

(21705.)

Refunding of taxes.

Receipts on Form No. 1 must be filed with the claims for refund.—Other instructions relative to the preparation of claims.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 25, 1899.

SIR: On and after November 1, 1899, in certifying claims on Form 46 for the refunding of taxes and before forwarding such claims to this

office, you will please see that the receipts on Form No. 1 given to the taxpayers at the time of payment accompany the claims, or that their absence is satisfactorily accounted for. In such cases, where the claim is for a portion only of the amount covered by the receipt and the claimant desires to retain the receipt, the fact that a claim for refunding has been presented, with the amount of such claim and its date, should be indorsed upon the receipt by the collector or a deputy collector, and the collector's certificate, on Form 46, or the affidavit of the deputy collector should show that such indorsements were made on the receipt.

If the claim is for the redemption of a special-tax stamp and prepared on Form 38, the stamp must accompany the claim, and if the claim is for the refunding of a special tax with penalty and made on Form 46, as directed in circular letter of June 20, 1899, the special-tax stamp and the receipt on Form 1 should both accompany the claim.

In claims for the refunding of amounts paid for documentary stamps used in error or in excess, the stamps must accompany the claims, or satisfactory evidence furnished showing that such stamps have been totally destroyed. Where practicable, the instrument must also accompany the claim.

In cases where, on account of the denomination of the stamps used, the exact amount of stamps used in excess can not be removed from an instrument, a greater amount of stamps should be removed in the presence of a revenue officer, and other stamps substituted sufficient to pay the tax. The claim may then be made for the value of the stamps removed, less the discount, if any, allowed at the time of purchase. The revenue officer in whose presence the stamps were removed should certify to the fact and to the value of the stamps retained on the instruments.

Respectfully, yours,
Mr. J. H. BINGHAM,
Collector Internal Revenue, Birmingham, Ala.

G. W. WILSON, *Commissioner.*

(21855.)

Methods of canceling adhesive stamps.

Regulations prescribing manner of canceling stamps have the force of law, and must be specifically followed.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 18, 1899.

SIR: Replying to your letter of the 14th instant, stating that you are in receipt of numerous inquiries as to the required methods for canceling certain documentary stamps by perforation or mutilation, you are advised that the regulations made in pursuance of the statute

provide for three methods of canceling documentary stamps of the denomination of 10 cents or any larger denomination by mutilation, as follows:

(1) By cutting and canceling said stamps with a machine or punch which will affix the initials and date when attached.

(2) By perforating through the stamp and paper to which it is attached the amount in figures for which said instrument was drawn.

(3) By mutilating said stamps by cutting three parallel incisions lengthwise through the stamp, beginning not more than one-fourth of an inch from one end and extending to within one-fourth of an inch of the other end, in addition to initials and date stamped or written thereon. (The required incisions may be made either before or after the stamp is affixed to an instrument.)

All documentary stamps of any denomination less than 10 cents, and all proprietary stamps, except private die stamps, should be canceled by writing or stamping thereon with ink the initials of the name of the person who affixed the same, and the date (day, month, and year, when affixed; or by cutting and canceling said stamp with a machine or punch which will affix the initials and date, as aforesaid.

Stamps imprinted on the face of checks or other instruments may be canceled by dating, signing, and filling out the instrument in the usual manner of drawing checks. Stamps on checks and drafts may also be canceled by perforating through the stamp and paper to which it is attached the amount in figures for which said check or draft was drawn.

These provisions have the force of law, and must be specifically followed without regard to the fact that other methods of cancellation may be deemed as effective. Neither the law nor the regulations can leave to the discretion of individuals the manner in which specific requirements shall be performed.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. J. M. KEMBLE, *Collector Fourth District, Burlington, Iowa.*

LEASES.

(See also DECISION 21537, p. 101.)

(20915.)

Stamp tax—Assignment of an interest in a lease.

When an interest in a lease is assigned the assignment is subject to taxation.

The rate is a proportional one, and based on the rate that would accrue were the lease, instead of an interest in the same, assigned.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 24, 1899.

SIR: This office is in receipt of a letter under date of March 10, 1899, from Robert L. Gregory, attorney at law, Sistersville, W. Va.

This gentleman's letter is written in relation to the assignment of a one-third interest in twenty-eight oil and gas leases, and he asks if any taxation accrues upon the instrument by which this one-third interest is assigned.

This office has given this question careful consideration, as it presents several features. This is not an assignment of a lease or leases, but is an assignment of a one-third interest in twenty-eight leases.

The first question to be determined is whether an assignment of an interest in a lease is subject to taxation. This office holds that it is.

The second question to be determined is how to find the rate of taxation. This office is of the opinion that the assignment of an interest in a lease should be taxed proportionately to the taxation that would accrue were the entire lease or leases assigned.

Under the law every assignment or transfer of a lease is subject to taxation at the same rate as that imposed on the original instrument. If these twenty-eight leases were assigned separately, the assignments would be subject to a tax based on the unexpired term of each lease. However, the twenty-eight leases are not so assigned, but a one-third interest in all of them is assigned by a single instrument. Under these circumstances, this office holds, first, that an assignment of an interest in a lease is subject to taxation; and, second, that in order to determine the tax in this instance a computation should be made as to the tax which would accrue if all of the twenty-eight leases were assigned separately, according to the unexpired term of each lease. Having found this amount, one-third of the same is the tax that is applicable to the instrument which in this instance is operative as an assignment of a one-third interest in the twenty-eight oil and gas leases referred to.

You are requested to inform Mr. Gregory of the ruling herein contained.

Respectfully, yours,
Mr. A. B. WHITE,

G. W. WILSON, *Commissioner*.

Collector Internal Revenue, Parkersburg, W. Va.

LEGACIES AND DISTRIBUTIVE SHARES.

(20545.)

Legacy tax.

Opinion of the Attorney-General construing section 29 of the act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 12, 1899.

The appended opinion of the honorable Attorney-General is hereby promulgated for the information and guidance of all officers of the

Internal Revenue Service. Any rulings of this office conflicting with this opinion are hereby modified to conform thereto.

G. W. WILSON, *Acting Commissioner*.

DEPARTMENT OF JUSTICE,
Washington, D. C., January 5, 1899.

The SECRETARY OF THE TREASURY.

SIR: I have the honor to acknowledge receipt of yours of the 7th of November, 1898, inclosing a copy of a letter addressed to you by the Commissioner of Internal Revenue, in which he desires to be advised as to the construction of section 29 of the act of June 13, 1898, and you ask my opinion upon the same.

From the letter of the Commissioner I copy the following:

"Under the provisions of section 29 of the act of June 13, 1898, taxes are required to be paid on legacies or distributive shares arising from personal property only 'where the whole amount of such personal property, as aforesaid, shall exceed the sum of ten thousand dollars in actual value passing after the passage of this Act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory.' Does this reference to a sum exceeding \$10,000 in actual value mean the value of the entire personal property left by a person at his death, or does it mean the actual value of his property remaining for distribution to his legatees and distributees after the payment of all debts standing against the estate?"

"This question is now before this office in the following case, submitted at the instance of an executor of a will: A died, leaving a personal estate of \$12,000 and debts amounting to about \$2,500, leaving only about \$9,500 to be paid to his heirs and legatees. Will the executor have to pay any revenue tax under the act of June 13, 1898?"

The question presented by the Commissioner is, in substance, as to whether the tax provided for in section 29 is to be levied upon the gross amount of a deceased person's estate, which shall have come into the hands of the administrator or executor, or upon such portion of the estate as constitutes legacies or remains to be paid out to distributees.

So much of section 29 as it is necessary to quote in passing upon this question is as follows:

"That any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of ten thousand dollars in actual value, passing, after the passage of this act, from any person possessed of such property, either by will or by the intestate laws of any State or Territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainer, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to a duty or tax, to be paid to the United States," etc.

The language of the act appears to me to be plain, so much so that it does not admit of a doubt. It refers not to the estates of deceased persons, which may come to the hands of administrators or executors.

but to legacies or distributive shares arising from personal property in charge of administrators, executors, or trustees. The law does not say that the estates of testators or intestates shall pay a tax, but that legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of \$10,000 in actual value, are taxable. The term "as aforesaid," used in the portion of the law above quoted, can not refer to the estate from which a legacy or distributive share is derived, but it refers to the personal property constituting the legacy or distributive share.

I am confirmed in this construction of this act by the further provision of the section in regard to the amount of tax to be paid, for in each clause designating such tax the words used are "where the person or persons entitled to any beneficial interest in such property shall be," etc. It is the interest to which the beneficiary is entitled which the law intended to make the subject of taxation. For instance, by way of illustration, if a testator, with an estate worth \$50,000, makes a bequest of \$25,000 to a person, and the residue of the estate is consumed in the payment of debts, the whole estate goes into the hands of the executor, and yet only the legacy of \$25,000 would be taxable under the provisions of this act. I can illustrate further by taking a specific legacy of jewelry or plate. This is taxable or not, according to its actual value. If such legacy is worth exceeding \$10,000, then it is liable to the tax; if not, it is not taxable.

The same principle applies as to the estates of intestates, no matter what the gross amount which comes to the hands of the administrator may be. It is the amount which remains for distribution, after the payment of debts, which the law intends to tax. An illustration: Suppose an estate which comes to an administrator consists of \$100,000 in money, or other personal property, and the intestate owes upward of \$100,000. The entire estate will be consumed in the payment of debts. In such case the provisions of section 29 do not apply, because there is nothing for distribution; there can be no distributive shares. To levy a tax upon the \$100,000 in such case would not be taxing a legacy or distributive share arising from personal property, but it would really be levying a tax upon the property of a deceased person, which ought to go to pay his debts. It would be indirectly a tax upon the creditors of a deceased person and not upon a legatee or distributee. However, on the other hand, if the estate which comes to the hands of the administrator is of the value of \$100,000, and \$50,000 will pay debts and costs of administration, leaving \$50,000 for distribution to those entitled, such distributive shares of this \$50,000 (as the whole amount exceeds \$10,000) would be subject to the tax under the provisions of the act. It is the net amount which remains in the hands of the administrator for distribution to the next of kin or those entitled which constitutes distributive shares in the estate of a decedent.

The word "passing," which is used in the act, is also explanatory of its meaning. It too refers to legacies or distributive shares "passing" after the passage of the act. A legacy passes from the testator to the legatee. A distributive share passes from the intestate to the distributee. An executor or administrator is the mere agency or instrumentality to carry out the purposes declared in a will, or to administer an estate of a deceased person according to the requirements of the law. A legacy or distributive share, in contemplation of law, does not pass to these agencies; it simply passes through them to such person as is entitled to the legacy or distributive share.

I hold, therefore, that it is the purpose of the law under consideration, not to levy a tax upon the gross amount of estates in the hands of executors, administrators, etc., but to tax such legacies and distributive shares arising from personal property as exceed \$10,000 in actual value. The tax is upon the legacy or distributive share, not upon the estate.

Respectfully, JAS. E. BOYD, *Assistant Attorney-General*.

Approved:

JOHN W. GRIGGS, *Attorney-General*.

(20587.)

Legacy tax.

The whole amount of personal property left for distribution after payment of legal debts and expenses determines the rate of tax imposed on legacies and distributive shares, without regard to the amount or value of each legacy or share.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 18, 1899.

SIR: This office is in receipt of a letter from Mr. Robert F. Thompson, of Canandaigua, N. Y., under date of the 6th instant, * * * relative to legacy tax.

In reply, you will please inform him as follows: The whole amount of personal property left for distribution after payment of legal debts and expenses determines the rate of tax imposed on legacies and distributive shares, under section 29 of the act of June 13, 1898, without regard to the amount or value of each legacy or share.

Respectfully, yours,

G. W. WILSON,
Acting Commissioner.

Mr. VALENTINE FLECKENSTEIN,
Collector Internal Revenue, Rochester, N. Y.

(20589.)

Legacy tax.

If the legal debts and expenses allowed by the court reduce the whole amount of personal property of an estate so that the whole amount of personal property left for distribution does not exceed \$10,000, no tax accrues.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 19, 1899.

SIR: In reply to your inquiry of the 16th instant, relative to legacy tax, you are advised that, if the whole amount of personal property of Rothrock estate amounted to \$12,000, and there were legal debts

and expenses, * * * thus reducing said amount so that the whole amount of personal property remaining for distribution to legatees and distributees would not exceed \$10,000, said legacies and distributive shares would not be subject to tax under section 29 of the act of June 13, 1898. (See Attorney-General's opinion, decision No. 20545, page 156.)

Respectfully, yours,

G. W. WILSON,
Acting Commissioner.

Mr. H. L. HERSHEY, *Collector Internal Revenue, Lancaster, Pa.*

(20591.)

Legacy tax.

Income from personal estate invested in United States bonds by executor under provisions of the will remaining in the hands of the executor is not subject to tax, but legacies, etc., represented by said bonds are subject to tax before distribution.—Schedule or list of the personal property should be prepared and returned by the executor or administrator at an early date after decedent's death.—When legacies are subject to tax.—When legacy tax accrues.—When payable.—Widow's share exempt.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 19, 1899.

SIR: Your letter of December 19 is received, relative to legacy tax on a certain estate. The facts you presented are as follows:

A. B. died, leaving an estate of personal property of over \$25,000. By his will it is provided that the personal property shall remain in the hands of the executors named in the will for a period of fifteen years, then to be distributed, one-half to the surviving wife and the other half to his children. In the meantime, one-half of the income from the personal property is annually to be invested by the executors in United States bonds.

You ask a series of questions. In reply, you are advised as follows:

(1) Tax accrues on legacies, etc., passing from any person dying on or after June 13, 1898.

(2) Legacy tax is not payable until the legacy is payable, and the legacy must not be paid until the tax shall have been paid.

(3) The income from a personal estate invested in United States bonds by executor, under provision of the will, remaining in the hands of the executor, is not subject to tax; but legacies or distributive shares represented by said bonds are subject to tax before distribution.

(4) The half of the income left to the wife, as well as half of the personal property which will go to the wife at end of fifteen years, as provided by the will, is exempt from tax.

(5) The schedule or lists of the personal property should be prepared and returned by executor or administrator at an early date after decedent's death. (See Form 419, revised.)

(6) In this connection, will say that tax accrues on legacies and distributive shares of an estate where the whole amount of personal property left for distribution, after deducting legal debts and expenses allowed by court, exceeds \$10,000, without regard to the amount or value of each legacy or share.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

MR. SINCLAIR TALIAFERRO,

United States Attorney, Galveston, Tex.

(20596.)

Legacy tax.

Legacies paid out of the proceeds of real estate, directed to be sold for that purpose, are not subject to the tax upon legacies arising from personal property. — In case the debts and claims against the estate exceed the appraised or clear value of the personal property, there can be no legacy tax; a return should be made by the executor, etc. (see Circular 517, revised). — On executor's refusal or failure to make return, see sections 30 and 31 of the act of June 13, 1898, and section 3172, Revised Statutes. — Where estates consist of both real and personal property, the whole amount of the personal property should be appraised separately from the real property.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 20, 1899.

SIR: Your letter of the 14th instant, together with a communication from Mr. F. T. L. Keiter, of Allentown, Pa., is received, relative to the legacy tax in the matter of the estate of Mary M. Griever, deceased. The facts as presented are as follows: The estate consists of real and personal property. The will provides that the real estate shall be sold and the amounts so realized, together with the personal property, after all just debts have been paid, shall go to pay legacies created by the will. Mr. Keiter states that the debts and claims against the estate will likely exceed the appraised value of the personal property. You ask for instructions in this matter.

In reply, you are advised that the whole amount of the personal property should be appraised separately from the real estate, and if the debts and claims against the estate exceed the appraised or clear value of the personal property, there can be no legacy tax under the act of June 13, 1898. A return should, however, be made by the executor, setting forth all the facts in such cases as nearly as possible. * * *

On the executor's refusal or failure to make such return, it will become your duty, under sections 30 and 31 of the act of June 13, 1898, and section 3172, Revised Statutes, to cause your deputy to inquire into the facts and to report the result to this office. * * *

Legacies paid out of the proceeds of real estate directed to be sold for that purpose are not subject to the tax upon legacies arising from personal property. (*United States v. Watts*, 1 Bond., 580; see *ibid.*, 1 Int. Rev. Rec., 17.)

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. P. A. MCCLAIN, *Collector Internal Revenue, Philadelphia, Pa.*

(20608.)

Legacy tax.

Legacy to a daughter-in-law is subject to tax under paragraph 5, section 29, act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 24, 1899.

SIR: This office is in receipt of a letter from Mr. L. P. Fuess, of Waterville, N. Y., under date of the 10th instant, * * * relative to legacy tax on a legacy to a daughter-in-law, stating the following facts:

A man died in this village, leaving him surviving as his legal heirs, as well as his legatees, a daughter-in-law, wife of a predeceased son, and two granddaughters. * * * Under the construction of the inheritance tax of our State a daughter-in-law is considered to be of the same degree of consanguinity to her husband's father as the husband would be if living.

He asks for a decision by this office on this question.

In reply, you will please inform him that this office holds that a legacy or distributive share bequeathed to a daughter-in-law of decedent is subject to tax under paragraph 5, section 29, of the act of June 13, 1898, which provides—

Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, * * * shall be a stranger in blood to the person who died possessed.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. CHARLES C. COLE,
Collector Internal Revenue, Syracuse, N. Y.

(20675.)

Legacy tax.

An advancement made by a parent to his or her child should be taxed as a legacy upon the death of the parent if notes were given for such advancement and constitute a part of the assets of the estate liable for debts.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 3, 1899.

SIR: In reply to so much of your letter of the 30th ultimo as relates to the balance of \$15,842.97 in case of the estate of Mary J. Jones, deceased, you are informed that this office holds that an advancement made by a parent to his or her child should be taxed as a legacy upon the death of the parent if the notes given for such advancement constitute a part of the assets of the estate liable for the debts, in case the estate should prove insolvent, whether it actually prove so or not. (6 Int. Rev. Rec., 122.) Therefore, if the notes given in this case passed to the executor as a part of the assets of this estate, said amount (\$15,842.97) is subject to legacy tax, and you will require the executor to make proper return thereof on Form 419, revised, and you will enter the additional amount of tax to be assessed on your next list, Form 23, or explain why an assessment should not be made.

Respectfully, yours, N. B. SCOTT, *Commissioner.*
MR. B. F. PARLETT, *Collector Internal Revenue, Baltimore, Md.*

(20791.)

Legacy tax.

A bequest made to the city of Springfield, Ohio, in Government bonds, the income to be expended in the maintenance and improvement of a public park, taxable under the act of June 13, 1898.—No exception is made in case of bequests for benevolent purposes, or bequests to a city.—The tax is not upon the property, but upon the right to dispose of it.—A bequest of Government bonds liable, as the tax is not upon the bonds.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 6, 1899.

SIR: Messrs. Bowman & Bowman, attorneys at law, Springfield, Ohio, have written to this office in regard to the bequest made by Mr. David L. Snyder of \$200,000 in Government bonds to the city of Springfield, the principal of which is to be kept invested, and the income to be expended in the maintenance and improvement of a public park.

I am of the opinion that, under the law, this bequest is subject to tax under section 29 of the act of June 13, 1898. Where the party entitled to any beneficial interest is a body politic or corporate, the

tax is \$5 for every \$100 of the clear value of such interest. This rate is increased if the whole amount of personal property exceeds \$25,000. The law did not make any exception in case of bequests for benevolent purposes or bequests to a city.

Messrs. Bowman & Bowman state that the executor of the estate desires to pay, under protest, the inheritance taxes on the balance of the estate, leaving this matter of the bequest to the city of Springfield until the question of its liability to such a tax is finally determined.

You are correct in advising these parties that such an arrangement can not be made. The proper course to pursue, if the parties desire to contest the matter, is to pay the tax and sue the collector for its recovery, after claim has been made for refund in the way provided by the statutes.

In the case of the *United States v. Perkins* (163 U. S., 625), which sustained a tax of this kind charged under the statutes of the State of New York against a legacy in favor of the United States, bequeathed by a citizen of the United States, it was held that the tax is not upon the property in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee.

In the case of *Wallace et al. v. Myers*, comptroller (United States circuit court, southern district of New York, 36 Fed. Rep., 184), it was held that where the property of the decedent includes United States bonds, the tax may be assessed upon the basis of their value. The tax is not imposed upon the bonds; the tax is upon the estate of the decedent.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. B. BETTMANN, *Collector First District, Cincinnati, Ohio*.

(20882.)

Legacy tax.

No rewards to persons giving information in regard to estates liable to legacy tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 20, 1899.

SIR: This office has received a letter from a party in New York in reference to special compensation for the detection of delinquents in relation to the legacy tax.

It is expected that this tax will be collected by internal-revenue officers without assistance from informers, and no inducements are offered in the way of reward to persons giving information in regard to estates liable to legacy tax.

The probate records are accessible to internal-revenue officers, and it is not believed that there are many instances where personal prop-

erty exceeding \$10,000 in actual value is distributed without the appointment of an executor or administrator and the same being made a matter of record.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. CHAS. H. TREAT, *Collector Second District, New York, N. Y.*

(20946.)

Legacy tax.

No legacy tax accrues in a case where the testator died prior to June 13, 1898, even though part of the estate is still in the process of settlement, if there is nothing in the terms of the will which postpones the right of the legatees to the immediate possession and enjoyment of their legacies upon the death of the testator.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 31, 1899.

SIR: This office is in receipt of a letter from Spencer & Hamelle, of Monticello, Ind., under date of the 25th instant, * * * relative to the liability of an estate for which they are attorneys, stating that the testator died in January, 1898, that part of the estate has been distributed, and part still remains to be collected and distributed.

In reply, you will please inform them that no legacy tax accrues in a case where the testator died prior to June 13, 1898, even though part of the estate is still in the process of settlement, if there is nothing in the terms of the will which postpones the right of the legatees to the immediate possession and enjoyment of their legacies upon the death of the testator.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. AMBROSE E. NOWLIN,
Collector Internal Revenue, Lawrenceburg, Ind.

(20950.)

Legacy tax.

Section 29 of the act of June 13, 1898, took effect immediately, being expressly within the exception in section 51 of the same act, which "declares" that this act shall take "effect on the day next succeeding the date of its passage, except as otherwise specially provided for."—The personal property going to the widow is to be included in making up the total value of the estate for the purpose of determining whether the "whole amount" of personal property, out of which legacies and distributive shares are to be paid, exceeds "the sum of ten thousand dollars in actual value."

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 3, 1899.

SIR: This office is in receipt of your letter of the 22d ultimo, inclosing a letter from Mr. Alfred G. Church, addressed to Deputy Collector

Humes, under date of the 18th ultimo, relative to legacy tax on the estate of Pearson Church, deceased, who, he says, died at 10.30 p. m. on June 13, 1898.

The questions asked and the statements made have had careful consideration.

In reply, you will please advise Mr. Church that it is held by this office that the legacies under the will of Pearson Church, deceased, are subject to the legacy tax under the act of June 13, 1898. The testator having died after the passage of that act, the legacies, of course, passed after its passage.

Section 51 of the war-revenue law provides "that this Act shall take effect on the day next succeeding the date of its passage except as otherwise specially provided for."

It will be seen that section 29 of the same act on legacies and distributive shares comes expressly within this exception.

Answering his contention that the personal property going to the widow is not to be included in making up the total value of the estate for the purpose of taxation, I will say that the fact that a legacy going to the wife of testator is by statutory provision exempt from tax does not alter the further plain fact that such a legacy arises from personal property that is part of the "whole amount" of personal property passing by the terms of the will, and in the opinion of this office it must be included with the other personal property in order to determine whether the entire amount passing is sufficient to subject to tax the other legacies passing under the will. To thus include the exempted legacy does not impair in any manner the value of the widow's interest under the will or deprive her of the full benefit of the exemption.

To hold that it is not the whole amount of personal property passing from the decedent that is to be taken into the calculation, but only the whole amount so passing that is "taxable," would be to read into the law words that, if such had been the intent of Congress, would have been used by them.

As to the effect of the ruling which Mr. Church points out, that "if a decedent's estate amounted to \$100,000, and he bequeathed it all to his wife with the exception of some specific bequests of \$2,000 or \$3,000 to others, it would compel the latter to pay just double the amount of taxes than if the decedent's estate was only valued at \$15,000, and all but \$2,000 or \$3,000 had been bequeathed to his wife," the answer is that, by the provisions of the act the rate of tax on legacies arising from large estates being made higher than on those arising from smaller estates, there appears to be no reasonable ground for such a construction of the law as would result in the escape from taxation of all legacies arising from the personal property of a rich estate where the testator saw fit to bequeath his property to his widow, except an amount of \$10,000 or less, given as legacies to others.

Respectfully, yours, G. W. WILSON, *Commissioner*.

Mr. JAMES S. FRUIT, *Collector Internal Revenue, Pittsburg, Pa.*

(20988.)

Legacy tax.

Where a person died on or after the passage of the act of June 13, 1898, leaving a personal estate, etc., legacy tax accrues at once on distributive shares and on legacies where no life estate intervenes.—There is no tax on legacies under the will of a person who died prior to June 13, 1898, unless the right of the legatees to the possession and enjoyment of their legacies is postponed to a date subsequent to June 12, 1898.—Legacies paid out of the proceeds of real estate directed to be sold for that purpose are not subject to legacy tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 11, 1899.

SIR: This office is in receipt of a letter from Mr. Samuel W. Beldon, 415 Market street, of your city, under date of the 27th ultimo, * * * inquiring as to the construction to be put upon the twenty-ninth section of the war-revenue law, particularly as to whether the tax imposed applies to the estate of a decedent dying before the passage of the act.

In reply, you will please inform him as follows:

(1) With reference to the personal estate of a person dying on or after the passage of this act, tax accrues at once on distributive shares and on legacies where no life estate intervened; and, in the latter case, tax accrues on reversionary legacies immediately on the death of the holder of the life estate, because the property then vests in possession in the reversionary legatees. This principle is laid down in *Mason v. Sargent*. (104 U. S., 689.)

(2) Where a decedent died prior to June 13, 1898, no legacy tax accrued on legacies, unless by the terms of the will the right of the legatees to the immediate possession and enjoyment of their legacies upon the death of the testator is postponed until after June 12, 1898.

(3) This office holds that legacies paid out of the proceeds of real estate directed to be sold for that purpose are not subject to the tax upon legacies arising from personal property, and where estates consist of both real and personal property the whole amount of the personal property should be appraised separately from the real property. (Treasury decision 20596, p. 161.)

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. ISAAC MOFFETT, *Collector Internal Revenue, Camden, N. J.*

(21024.)

Legacy tax.

Accumulations in the hands of an executor to be included in estimating the value of personal property.—Case of partial distribution of estates.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 15, 1899.

SIR: Your letter of the 12th instant, in regard to legacy tax, has been received, and I will answer your questions seriatim.

(1) As the Missouri law allows two years for the settlement of an estate, it is not necessary for the administrator to make return on Form 419 until he is ready to make distribution and determine the value of the legacies or distributive shares to be paid. Payment of the tax before distribution is imperative.

(2) Accumulations from dividends and interest in the hands of the executor or administrator must be included in making up the value of personal property. They are not taxable until ready for distribution, and then they are taxable the same as the rest of the estate left by decedent. The clear value of the legacies is subject to tax.

(3) Income from Government bonds left by the testator must be taxed the same as income from any other source payable to the beneficiary.

(4) When the personal property left by the decedent does not exceed \$10,000, no tax is due and no return is required to be made.

(5) In the partial distribution of estates the return should state the facts, and you are expected to keep watch of the estate and see that tax is paid on future distribution. A record should be kept in your office, and the offices of the probate court or other like offices should be examined to ascertain the condition of estates where only partial return has been made.

(6) When the personal property does not exceed \$10,000 at the time of the testator's death, but before final settlement is made it has enhanced in value from dividends of stock, interest on notes, etc., so that it brings the value above \$10,000, the tax accrues.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. H. C. GRENNER, *Collector First District, St. Louis, Mo.*

(21043.)

Legacy tax.

The sum of \$1,000 left by the will of testator to trustees to purchase a burial lot and erect a gravestone is not subject to legacy tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 19, 1899.

SIR: In reply to your letter of the 15th instant, stating that a testator gave by will \$1,000 to trustees to purchase a burial lot and erect a gravestone, and asking if this \$1,000 is subject to legacy tax, you are advised that it is not considered by this office a legacy within the meaning of the statute, and, therefore, not subject to legacy tax.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. JAMES A. WOOD,
Collector Internal Revenue, Portsmouth, N. H.

(21049.)

Legacy tax.

Where mortgages and notes are assets of an estate, moneys derived therefrom, although so derived through foreclosure and sale of the real estate by the executor or administrator, should be included in the personal property left for distribution.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 22, 1899.

SIR: In reply to the question propounded in your letter of the 12th instant, relative to legacy tax, you are advised that, after careful consideration, this office holds that in cases where mortgages and notes are assets of an estate, moneys derived therefrom, although so derived through foreclosure and sale of the real estate by the executor or administrator, should be included in the personal property left for distribution within the meaning of the statutes.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Mr. H. C. GRENNER, *Collector First District, St. Louis, Mo.*

(21052.)

Legacy tax.

In the case of a decedent who executed a will in New York, where she was then residing, but whose domicile at the time of her death was not in the United States, the tax accrues on legacies under the act of June 13, 1898.—The law makes no discrimination between the estates of resident and nonresident decedents.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 24, 1899.

SIR: Your letter of the 19th instant, inclosing a copy of the will of Louisa Augusta Ripley Pinede, deceased, a nonresident of the United States, has been received.

You state that the attorneys claim that the personal property passing under the will is not liable to taxation, but no reason is given for this opinion. It appears that Mrs. Pinede executed the will in New York in 1890, where she was then sojourning, and that the sole legatee under the will is the decedent's daughter, who resides in Prussia. The question involved, as I understand, is whether a tax is payable on the estates of those persons whose domiciles, at the time of their death, were not in the United States.

It does not appear to this office that it was the intention of Congress, by the act of June 13, 1898, to exempt from taxation the estates of nonresidents situated in this country. The property is held subject to our laws, and before distribution an administrator or executor must

qualify under our laws, and there seems to be no reason in law or equity why, because the decedent was domiciled in a foreign country, the property passing, situated here, should be exempted from tax, thus putting persons residing abroad in a better position than our own citizens. I do not think that Congress intended to make an unjust discrimination between estates of resident and nonresident decedents.

In a case in North Carolina where the decedent was a foreigner and died abroad intestate, leaving property in that State, it was held that the principle by which a distinction was made between personal property and real estate, so that in regard to the former a construction depending upon the domicile of the owner was adopted, was based upon a fiction that had no application to the questions of revenue. Judge Pearson (2 Jones Eq., 57) said:

The motion upon which the principle of the domicile is based—that personal property attends the person, and is where the owner lives—is a mere fiction, and its very restricted application rests upon this comity of nations; but in collecting debts and taxes we must proceed upon the fact, and consider the property as being where it actually is. In other words, the situs of the property must be the governing principle.

This office holds that the legacy to Mrs. Pinede's daughter is subject to tax. The executors can pay the tax and make a claim for refund, and sue for its recovery if they wish to test the question in court.

Respectfully, yours, G. W. WILSON, *Commissioner*.

Mr. F. R. MOORE,

Collector First District, Brooklyn, N. Y.

(21078.)

Legacy tax.

Mode of procedure in cases where an executor, administrator, or trustee has distributed an estate on which tax has accrued without first paying the legacy tax required by law.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 2, 1899.

SIR: In reply to your letter of 7th ultimo, inclosing a letter from Mr. Albert H. Atterbury, 111 Broadway, New York * * * asking whether or not an executor who has paid over to a legatee the gross amount of a legacy is liable to be sued by the Government and made personally liable for the tax.

In reply, you will please advise him in the affirmative. When an executor, administrator, or trustee has distributed an estate, on which tax has accrued, under section 29 of the act of June 13, 1898, without first paying the legacy tax required by law, the assessment having

been made and the demand notice, Form 455, having been served on said executor, the amount of said tax, interest, and costs, becomes a lien upon the property of said executor. (Sec. 3186, Rev. Stat.)

The proper course to pursue to recover legacy taxes in such cases would be either by distraint or by a proceeding in the circuit or district court of the United States. In the latter case, instructions should first be had from this office. A collector should distraint upon any property belonging to the executor, etc., which can be found, as this method is preferable whenever possible, and should he fail to find any property of the executor, etc., to distraint upon, he may proceed, under instructions from this office, by suit in United States circuit or district court "against such person or persons as may have the actual constructive custody or possession of such property or personal estate, or any part thereof, and shall subject such property or personal estate, or any portion of the same, to be sold upon the judgment or decree of such court."

The collector may also, under instructions from this office, proceed against the executor, administrator, or trustee, or any person, for the penalty of \$500 imposed under section 30 of the act of June 13, 1898, in cases of refusal or neglect of such persons to produce books, papers, etc., at the request of the collector, etc.; and, further, should such person refuse or neglect to produce books, etc., when summoned by the proper internal-revenue officer, on Form 130, he makes himself liable for contempt. (Sec. 3175, Rev. Stat.)

Section 31 of the act of June 13, 1898, enables other provisions of internal-revenue laws to be used in such cases.

Respectfully, yours,

G. W. WILSON, *Commissioner*.

MR. CHARLES H. TREAT,

Collector Second District, New York, N. Y.

(21147.)

Legacy tax.

Tax on legacies is a lien on the personal property of the decedent and not upon the real estate.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 10, 1899.

SIR: Your letter of the 5th instant has been received, inclosing a letter addressed to you by Mr. William F. Voltz, for the German-American Title and Trust Company, submitting the question "whether the tax on legacies and distributive shares of personal property, as fixed by the war-revenue law of 1898, is a lien and charge upon the

real estate of the decedent" under section 30 of that act, which provides "that the tax or duty aforesaid shall be a lien and charge upon the property of every person who may die as aforesaid for twenty years, or until the same shall, within that period, be fully paid to and discharged by the United States."

You will please inform him, in reply to this inquiry, that in the opinion of this office the lien, under this section of the statute, is upon the personal property of the decedent and not upon his real estate.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. P. A. McCLAIN, *Collector First District, Philadelphia, Pa.*

(21230.)

Legacy returns.

Where the wife or husband is left a life interest in the *whole* or a portion of the personal estate, a return should be made.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 3, 1899.

SIR: In reply to your letter of the 31st ultimo, you are informed that where *all* of the personal property of an estate is bequeathed to the wife or husband, *absolutely*, there is no necessity of requiring a return (Form 419) to be made; but if the wife or husband is only left a *life interest* in the personal estate, whether *all* or part thereof, proper return should be required.

Respectfully, yours, ROBT. WILLIAMS, Jr.,
Acting Commissioner.
Mr. JAMES D. GILL, *Collector Internal Revenue, Boston, Mass.*

(21231.)

Mortality tables.

Additional data, including ages from birth to 9 years, inclusive, for completion of approved mortality tables in regulations, series 7, No. 3, revised January 28, 1899.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 6, 1899.

SIR: Referring to office letter of May 18, 1899, concerning the estate of ———, below you will find the present worth of annuities, life

interests, and reversionary interests, from birth to 9 years of age, inclusive, viz:

Worth of annuities, life interests, and reversionary interests.

Age.	Mean redemption period.	Annuity or present value of \$1 due at the end of each year during the life of a person of specified age.	Reversion or present value of \$1 due at the end of the year of death of a person of specified age.
0.....	23.179	\$14.72829	\$0.38507
1.....	30.552	17.30771	0.28586
2.....	35.626	18.08578	0.24247
3.....	37.572	19.15901	0.22465
4.....	38.702	19.41226	0.21491
5.....	39.362	19.55901	0.20850
6.....	39.654	19.61781	0.20703
7.....	39.691	19.62532	0.20673
8.....	39.625	19.61097	0.20727
9.....	39.204	19.53413	0.21022

These redemption periods and values were furnished this office on the 3d instant by Mr. J. S. McCoy, Government Actuary, for the purpose of completing the approved mortality tables in regulations, series 7, No. 3, revised January 28, 1899. * * *

Respectfully, yours,

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

Mr. JOHN G. WARD, *Collector Fourteenth District, Albany, N. Y.*

(21256.)

Legacy tax.

Where persons derive their interest in personal property through the exercise of power of appointment by a person dying after the passage of the act of June 13, 1898, this power having been granted by the will of a person dying possessed of this property prior to that act, legacy tax is required to be paid on such interests.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 10, 1899.

SIR: In your letter of the 17th ultimo you submit a question with reference to legacy taxes in the case of a testatrix who died in April of this year, leaving, by will, legacies amounting in all to \$150,000, but whose personal property, according to the inventory, amounts to but \$95,000, and who, by her will, also exercised certain powers of appointment, which she had by virtue of the wills of two previously deceased persons, by the first of which powers she disposed of \$75,000 of personal property, and by the second, \$30,000.

In the opinion of this office, the executor of the will of this testatrix is required to pay tax on the legacies passing by her power of appointment to the legatees mentioned therein, in view of the fact that their

right to the possession and enjoyment of these legacies arose from the exercise by her of this power, and they became entitled thereto at a time when the act of June 13, 1898, was in effect imposing tax on legacies arising from personal property passing "after the passage of this act." Further, if the whole amount of personal property, left by the testatrix herself, remaining for distribution after the payment of all debts and liabilities, exceeds the sum of \$10,000, the executor is required to pay tax on each legacy (however small the amount of it may be), according to the rates prescribed by section 29 of the act.

Respectfully, yours, ROBT. WILLIAMS, Jr.,
Mr. JAMES D. GILL, *Acting Commissioner.*
Collector Third District, Boston, Mass.

(21339.)

Legacy tax.

A legacy left to a half brother is subject to legacy tax the same as though it were left to a whole brother.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 1, 1899.

SIR: Replying to your letter of 22d instant, you are advised that a legacy left to a half brother would be considered the same as though it were left to a whole brother, as far as the internal-revenue law is concerned, and subject to legacy tax as such under section 29, act of June 13, 1898.

Respectfully, yours, ROBT. WILLIAMS, Jr.,
Acting Commissioner.
Mr. P. A. McCLAIN, *Collector First District, Philadelphia, Pa.*

(21340.)

Legacy tax.

Where the State law permits estates to be settled without making appraisal, an appraisal made by the executor under oath and filed with the collector will be accepted, unless there is some reason for questioning it.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 1, 1899.

SIR: In reply to your inquiry of the 23d ultimo, relative to what constitutes a satisfactory appraisal of personal property subject to legacy tax, in which you state that you have advised that such

appraisal or inventory as is required to be filed at the probate or register court would be accepted, you are informed that in this you are correct.

As to cases where the heirs desire that no appraisal be returned to probate and the law permits estates to be settled without making appraisal, you are informed that if an appraisal is made by the executor under oath and filed with you it will be accepted by this office unless there is some reason for questioning it. You should, however, investigate and satisfy yourself that such appraisal made by the executor is a true statement of all the personal property belonging to the estate, and require such verification as you deem necessary.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,

Acting Commissioner.

Mr. JAMES D. GILL, *Collector Third District, Boston, Mass.*

(21469.)

Legacy tax.

Instructions where life interests have expired.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 4, 1899.

SIR: Your letter of the 2d instant, covering the estate of ———, deceased, has been received.

You state that ———, who had a life interest in this estate, died April 11, 1899, and the trust fund (\$95,937.85) now reverts to charities; that you have informed the executor that the tax (as shown by Form 419) of \$6,448.18 is correct, but that he is desirous that the Department examine and advise you before he pays the tax.

In reply, you are informed that the tax is due on the whole \$95,937.85, which amount is the present clear value of the legacy to be distributed. This tax (\$9,593.79) may be received prior to assessment if tendered to you.

The reversionary column of the mortuary tables, published in regulations, series 7, No. 3, revised, must not be used in computing taxable values where a life interest has already terminated; neither is it safe to use said column prior to the termination of a life interest, as the taxable value can not be terminated in all cases until the contingency arises—that is, the relationship of the reversionary legatee can not always be determined until the death of the life tenant.

Respectfully, yours,

G. W. WILSON, *Commissioner.*

Mr. JAMES D. GILL, *Collector Third District, Boston, Mass.*

(21649.)

Legacy tax.

Legacy tax accrues where the whole amount of personal property left for distribution, after payment of legal debts and expenses, exceeds the sum of \$10,000, without regard to the amount or value of each legacy or share.—Whether the tax is to be paid out of the separate legacies or out of the estate.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 10, 1899.

SIR: This office is in receipt of a letter from Mrs. Gertrude L. Goodwin, Rochester, N. H., under date of the 26th ultimo, relative to legacy tax.

In answer to the inquiries of Mrs. Goodwin * * * you will please advise her as follows:

(1) Legacy tax accrues where the whole amount of personal property left for distribution, after the payment of legal debts and expenses, exceeds the sum of \$10,000, without regard to the amount or value of each legacy or share.

(2) The act of June 30, 1864, as amended by act of July 13, 1866, provided that the tax on legacies and distributive shares must be deducted from the individual legacies or distributive shares. The present law does not contain such a provision, but does provide that the tax is a lien upon the property of the decedent until paid. It is immaterial to this office whether this tax is paid out of the separate legacies or out of the estate, but the payment of the tax before distribution is imperative.

The evident spirit of the act was, without any doubt in my mind, that the tax should be deducted from the individual legacies or distributive shares by the executor or administrator before paying the same to legatee or distributee unless, in case of a will, the will provides that the tax is to be paid out of the estate; but, as the present law does not expressly so state, this office will not instruct the executor upon this point.

Respectfully, yours,

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

Mr. JAMES A. WOOD,

Collector Internal Revenue, Portsmouth, N. H.

(21778.)

Legacy tax.

Taxes on life interests, or interests for given periods, should be paid at one time, and not annually.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 15, 1899.

SIR: Referring to your letter of the 14th instant, you are informed that the return (Form 419) of the trustees of the estate of ———, deceased, has been received.

It is now decided that an executor or trustee should not pay the tax on the life interest, or an interest for a given period, annually, but the whole tax on such interests should be paid at one time. * * *

Respectfully, yours,

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

Mr. B. BETTMANN, *Collector Internal Revenue, Cincinnati, Ohio.*

(21781.)

Stamp tax—Documents used in distributing legacies taxable.

Where the distribution of legacies or distributive shares requires documents taxable according to other provisions of the act of June 13, 1898, the documents should be stamped regardless of the payment of a legacy tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 17, 1899.

SIR: I am in receipt of your letter of the 3d instant, written in relation to the question of taxation on an assignment of a mortgage made in pursuance of the directions contained in a will, the testator having devised certain mortgages to certain devisees, these distributive shares having paid their tax under that portion of the act of June 13, 1898, entitled "legacies and distributive shares," and you ask if the assignment of this mortgage is subject to taxation, the other tax having been paid.

The following is the statement of facts in this case:

Mary Roberts Smith, of the city of Philadelphia, lately deceased, left personal property invested in mortgages to the amount of \$185,000, or thereabouts. Her executors in due course filed their first and final account, and upon the audit thereof by the orphan's court these mortgages were awarded to C. Morton Smith and Sally Roberts Smith, children of the decedent, in equal portions, for their distributive shares as legatees under their mother's will. The executors have paid the legacy tax upon the fund in their hands, which included the

principal of these mortgages, but as the legal title to the mortgages was in the executors, it was necessary that they assign the mortgages to the legatees.

You inquire in reference to the taxation on these assignments.

In reply, you are advised that these assignments are subject to taxation. This is not a double taxation. The tax accruing under section 29 of the revenue act relating to "legacies and distributive shares of personal property" is a tax levied upon a legacy or a distributive share arising from personal property. No taxation accrues upon such shares unless the whole amount of such personal property shall exceed the sum of \$10,000 in actual value.

If in passing a distributive share to a legatee the executor is required by the circumstances of the case to execute a document that is taxable according to other provisions of this act, the document must be stamped, for were the assignment of the mortgage in this instance held to be exempt it would necessarily follow that no document, otherwise taxable, would be subject to a stamp duty if it were required to be executed in carrying out the provisions of a will, or of an order of the court, in cases of intestacy, in distributing the share. For instance, if the distributive share of one of these children consisted of mortgages, stocks, and the proceeds of a life-insurance policy, and in order to place title and possession of this personal property in the legatee, the executor or administrator was required to assign a mortgage, transfer certain shares of stock, and distribute the proceeds of a policy of life insurance by means of a check, and in order to collect said insurance policy the beneficiary and legatee should give a power of attorney to the executor or administrator, would it be a reasonable contention that none of these documents were subject to taxation because a tax was required to be paid on such distributive share?

This office could not agree with a contention that holds that the documents otherwise taxable would not have to be stamped, because the legacy tax was paid, and, therefore, if in pursuance of distribution of a share or shares of personal property on which a legacy tax has accrued, it is required that documents shall be executed and issued that are taxable according to other provisions of the act, these documents should be stamped, and this office does not consider that this is a double taxation.

The documentary tax is not a tax on transactions; it is a tax on the evidence of transactions, and when these taxable evidences are issued they should be stamped, regardless of the fact that there may be incidents connected with the transactions that are taxable according to other provisions of the act.

Respectfully, yours,
G. W. WILSON, *Commissioner.*
Mr. CHAS. C. VAN RIPER, *Philadelphia, Pa.*

(21877.)

Legacy tax.

Leases or leasehold estates and the income therefrom are considered as personal property as far as the internal-revenue law is concerned.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 23, 1899.

SIR: In reply to your letter of the 6th instant relative to legacy tax, you are advised that leases or leasehold estates and the income therefrom are considered by this office as personal property for the purpose of taxation as far as the internal-revenue law is concerned.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Mr. F. E. ALFRED, *Newport, Vt.*

(7.)

Legacy tax.

A bequest to a priest for the purpose of paying for masses not exempt from legacy tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 6, 1900.

SIR: In reply to a letter addressed to this office by Mr. M. J. Howley, of Cairo, Ill., under date of the 12th ultimo, who has to-day been referred to you, asking whether or not a bequest of a sum of money to a priest for the purpose of paying for masses is liable to legacy tax, you will please advise him in the affirmative.

Paragraph 5, section 29, of the act of June 13, 1898, contains only one provision on the subject of exemption from legacy tax, namely, legacies to a husband or a wife.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Mr. WILLIAM H. POWELL,
Collector Thirteenth District, East St. Louis, Ill.

LIQUORS.

(20487.)

Increased tax on fermented liquors.

Where assessments have been made which, under the opinion of the Attorney-General heretofore published, are erroneous, claims may be made for abatement or refund, as the case may be.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 3, 1899.

SIR: Your letter of the 27th ultimo, in regard to the collection of the \$1 per barrel additional tax on fermented liquors which dealers had on hand the 14th day of June, 1898, has been received.

The Attorney-General has decided that only beer in the hands of brewers, or stored in warehouse by them, is subject to the increased tax. Stock which was stored in hands of wholesale or retail dealers, who were not brewers or agents of brewers, is not subject to the additional tax.

Where assessments have been made which, by this decision, are erroneous, claims can be made for abatement or refund, as the case may be.

Respectfully, yours, N. B. SCOTT, *Commissioner.*
Mr. JAMES D. GILL, *Collector Third District, Boston Mass.*

(20488.)

Increased tax on fermented liquors.

Additional opinion of the Attorney-General in regard to the tax on fermented liquors under the provisions of the war-revenue act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 4, 1899.

The appended opinion of the honorable Attorney-General is hereby promulgated for the information and guidance of all officers of the Internal-Revenue Service.

N. B. SCOTT, *Commissioner.*

DEPARTMENT OF JUSTICE,
Washington, D. C., December 30, 1898.

SIR: In your letter of October 13, in addition to the question whether fermented liquors held by retail dealers on June 14, 1898, were subject to the additional tax of \$1, you submit three questions growing out of the provisions of the war-revenue act of June 13, 1898, for a discount

of 7½ per cent upon all sales by collectors to brewers of the stamps provided for the payment of the tax, namely:

(1) Is the tax to be assessed upon fermented liquors, in case of attempted evasion and willful failure to buy and to fix the stamps, a tax of \$2 per barrel, or a tax of \$1.85 per barrel?

(2) Is the additional tax to be assessed and collected upon fermented liquors stored in warehouse on June 14, 1898, a tax of \$1 per barrel or of 92½ cents?

(3) Is the tax upon fermented liquors, bearing the \$1 stamp, which were removed from the brewery on June 14, 1898, without the new \$2 stamp, owing to the failure of the Government to furnish the same, a tax of \$2 per barrel or of \$1.85 or of 85 cents?

First. In case of evasion and willful failure to buy and affix the necessary stamps, it is clear that the tax should be collected and assessed at its full amount, \$2 per barrel.

Second. Since the discount is only allowed upon sales of stamps by collectors to brewers, and since the law provides that the additional tax imposed on liquors shall be assessed and collected in the manner now provided by law for the collection of taxes not paid by stamps, it is obvious that the discount does not apply to the additional tax, and that this must be assessed and collected at the full rate of \$1.

Third. Your third question does not state the facts with sufficient fullness and clearness to enable me to express an opinion. Just under what circumstances, and in accordance with what arrangement, the brewers were permitted to remove their beer from the breweries or bonded warehouses on June 14, 1898, by affixing the old \$1 stamp, and leaving the additional tax to be adjusted afterwards, does not appear. The facts with relation to the circumstances under which fermented liquors were removed from breweries on June 14, 1898, without the new \$2 stamp being affixed thereto, and with regard to any arrangement or understanding had with the brewers concerning a subsequent adjustment of the additional tax due, should be fully stated.

Respectfully, yours, JOHN W. GRIGGS, *Attorney-General*.
The SECRETARY OF THE TREASURY.

(20498.)

Special tax—Ingwer liqueur.

Ingwer liqueur, composed of alcoholic liquor and sugar, with a flavoring of ginger, is not a medicine under whatever label it may be sold, but belongs in the general class of liqueurs or cordials, for the manufacture of which for sale the special tax of a rectifier must be paid, and for sale of which the special tax of a liquor dealer.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 4, 1899.

SIR: Schroeder Brothers, 766 Milwaukee avenue, Chicago, recently sent to this office a package containing 1 bottle of ingwer liqueur, which has been analyzed by the chemist here, who reports, under

date of the 27th ultimo, that "it is not of a medicinal character, but a beverage of the general class of liqueurs or cordials containing large amounts of alcohol and sugar," and that "the ginger (ingwer) is simply a flavor, just as the anise is the flavor in the liqueurs called anisette," and "is not present in sufficient quantities to exhibit it as a medicine, and there is nothing about the sample to recommend it as a medicine."

You will, therefore, please inform Schroeder Brothers * * * that they can not manufacture this ingwer liqueur for sale without subjecting themselves to special tax as rectifiers, nor sell it without paying special tax as liquor dealers and that all persons engaged in selling it must be required to pay special tax as liquor dealers under the internal-revenue laws of the United States.

Respectfully, yours, N. B. SCOTT, *Commissioner*.
Mr. F. E. COYNE, *Collector First District, Chicago, Ill.*

(20502.)

Special tax—Retail dealer's sale of packages aggregating 5 gallons.

Where a retail dealer sells to one person a one-eighth barrel of one kind of beer, a one-eighth barrel of another kind, and so on, upon a single order, he subjects himself to special tax as a wholesale dealer, unless each package differs in price from the other, in which case each is regarded as the subject of a separate sale, or unless (where the beers are similar in price and quality) a separate order is given by the purchaser for each package. In either of these cases, each package is to be regarded as separately sold, and the special tax of a wholesale dealer is not required to be paid therefor.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 6, 1899.

SIR: In reply to your letter of the 22d ultimo, relating to the sale, by a retail malt liquor dealer or retail liquor dealer, of "an eighth barrel of Schlitz's beer, an eighth barrel of Pabst's beer, and an eighth barrel of Anheuser-Busch's beer to the same person," you are hereby advised that if the person buying gave to the retail dealer a separate order for each of these separate packages of beer, each package was the subject of a separate sale, and the retail dealer is not required to pay special tax as a wholesale dealer for delivering all the packages at one time to the purchaser on these separate orders. If, however, but a single order was given for all these packages of beer, they must all be regarded as disposed of at a single sale, and the retail dealer must be required to pay special tax as a wholesale dealer, unless it is shown that each of these different kinds and packages of beer was sold at a different price from the other packages. If this be shown, each

different kind and package of beer must be regarded as having been separately sold, and in such case the special tax of a wholesale dealer is not required to be paid.

Respectfully, yours,

N. B. SCOTT, *Commissioner.*

Mr. F. VON BAUMBACH,

Collector Internal Revenue, St. Paul, Minn.

(20509.)

Special tax—Fake wine.

The manufacturer of the compound liquor known as "Fake wine" is required to pay special tax as rectifier; each bottle of the compound is subject to stamp tax under Schedule B, act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 9, 1899.

SIR: Your letter of the 22d ultimo has been received concerning a compound known as "Fake wine," manufactured by the Northrop & Sturgis Company, of Portland, Oreg., and "composed of ext. champ. cit. acid, syrup, sherry, and white wine."

The wine of which this "Fake wine" is in part composed, as it is understood from your statement, is a genuine wine "produced in California." If so, the compound, though made in imitation of sparkling wine or champagne, is not such a liquor as that described in section 3328, Revised Statutes, upon which tax is imposed by that section; but the Northrop & Sturgis Company must be required to pay special tax as rectifiers under the third subdivision of section 3244, Revised Statutes, for manufacturing this compound for sale. Each bottle of it put up for sale is subject to the tax imposed by that provision of Schedule B of the act of June 13, 1898, which reads:

Sparkling or other wines, when bottled for sale, upon each bottle containing one pint or less, one cent.

Upon each bottle containing more than one pint, two cents.

You will please report the case for assessment of special tax and penalty against the Northrop & Sturgis Company as rectifiers, and also ascertain and report the amount of stamp tax under Schedule B for which they have rendered themselves liable in sending out these bottles of wine without the requisite stamp.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. DAVID M. DUNNE,

Collector Internal Revenue, Portland, Oreg.

(20755.)

Refunding—Additional tax on beer, etc.

Preparation of claims for refunding the additional tax paid on fermented liquors.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 28, 1899.

SIR: As requested in yours of the 11th instant, I return herewith the claim on Form 46 of P. Fred. Simon for the refunding of \$114.75, additional tax paid on beer. In preparing such claims all blank spaces should be filled; the blank space marked thus † should be filled as follows: "Additional tax on beer on hand June 14, 1898." In stating the reason for the remission or refunding of the tax, claimant should say:

Deponent (or the said firm) was neither a brewer nor the agent of a brewer, but was engaged exclusively in the bottling of beer and selling the same (or in wholesaling or retailing liquors or malt liquors); that on the 14th day of June, 1898, he (or they) had on hand ——— barrels of beer (ale or porter), of which he was (or they were) the *bona fide* owner (or owners), having purchased the same, tax paid, prior to June 14, 1898, from ———.

Claims made with the above statements, either on Form 46 supplied by this office, or on a suitably prepared private form, properly certified, will be considered by this office in due course of business.

Where parties making claims are, or have been, agents of brewers or hold themselves out to the public as agents of brewers, you should satisfy yourself whether they actually owned the beer in question or whether it was the property of a brewer.

Respectfully, yours, N. B. SCOTT, *Commissioner.*

Mr. A. D. SANDERS,

Collector Twenty-eighth District, Rochester, N. Y.

MEDICINAL PREPARATIONS.

(See also PETROLATUM; PROPRIETARY ARTICLES; and DECISION 20498, p. 181.)

(20839.)

Stamp tax—Medicines.

Bicarbonate of soda held to be an uncompound medicinal chemical, and exempt from tax under section 20, act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 10, 1899.

SIR: Referring to your letter in regard to the taxability of bicarbonate of soda prepared in New York by Church & Co., known as the

"Arm and Hammer Brand," I have to say that the question has been carefully examined by this office, with the following result:

No liability would have been claimed in respect to this article as a medicinal preparation except for a small pamphlet issued by Church & Co., in which it was claimed that it possessed remedial qualities relative to certain diseases. It was suggested, however, that bicarbonate of soda was probably an uncompound chemical, and, therefore, exempt.

A package of this brand of soda was referred to the chemist of this office for analysis, and he reports that it is an uncompound chemical, and, so far as it is advertised as a medicine, it is an uncompound medicinal chemical, and, therefore, exempt from taxation under section 20 of the act, no matter what claims are made in regard to it, and it is so ruled.

Please communicate this ruling to Messrs. Church & Co.

Respectfully, yours,

G. W. WILSON, *Commissioner*.

Mr. CHAS. H. TREAT,

Collector Internal Revenue, New York, N. Y.

(20912.)

Stamp tax—Hydrogen peroxide.

Hydrogen peroxide held to come within the exemption provided under section 20, act of June 13, 1898, for "any uncompound medicinal drug or chemical."

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 20, 1899.

SIR: Your letter, under date of January 30, 1899, was received. You inclose a letter addressed to you under date of January 23, 1899, from the Oakland Chemical Company, 465 to 467 West Broadway, New York, N. Y., submitting a sample of hydrogen dioxide, manufactured by them, and a booklet under which it is sold, and making a claim therefor of exemption, provided under section 20 of the act of June 13, 1898, for uncompound medicinal drugs or chemicals.

Upon receipt of this sample it was submitted to the chemist of the bureau for analysis. As a result of the analysis, the chemist states:

Peroxide of hydrogen is a definite chemical compound of an exact and known composition, and as such would seem to be an "uncompound chemical" on the lines of the decision of the United States district court for the southern district of New York. The only question seems to be as to whether it may be considered as still "uncompound" when put up in the shape of the dilute, and slightly acidified, solution of the pharmacopoeal preparation. In favor of this view it may be said that while hydrogen peroxide is a definite chemical species, it is very prone to decomposition when it is broken up into oxygen and water.

It will be observed that while the chemist is of the opinion that hydrogen dioxide is a definite, and therefore an uncompounded, chemical, he leaves the question open to doubt as to whether the presence of a slight trace of acid (stated by him to be usually phosphoric) added as a preservative and 97 per cent of water operates to deprive the preparation of the exemption referred to.

After a careful consideration of the statements made by the chemist, this office is of the opinion that, as the addition of the acid was made not to enhance the potency of the chemical as a remedial agent, but to preserve it intact from decomposition, it can not be held to deprive the preparation of the exemption provided under section 20, as there is no tax on preservatives under the act of June 13, 1898, and, therefore, the addition of them to an otherwise nontaxable preparation should not be construed to render it taxable. Nor should the addition of water be held to have been for the purpose of giving the preparation additional curative properties, but rather to increase its stability by rendering it less volatile, but safer to be handled. The presence of the acid, in the opinion of the chemist, might also be regarded as an impurity rather than a component part of an officinal solution of hydrogen peroxide.

While the presence of the acid and diluent does, undoubtedly, affect the chemical entity of hydrogen dioxide, H_2O_2 , it is not believed to have been the intention of Congress to deprive a substance of the exemption provided for it upon the grounds that it contains a preservative, a diluent, or an impurity, and, therefore, the "O. C." brand of hydrogen dioxide, manufactured by the Oakland Chemical Company, is held to come within the exemption provided under section 20, act of June 13, 1898, for uncompounded medicinal chemicals.

You will please advise the company in accordance with this decision.

Respectfully, yours, G. W. WILSON, *Commissioner*.

Mr. C. H. TREAT, *Collector Second District, New York, N. Y.*

(20913.)

Stamp tax—Lanoline, etc.

Lanoline and adeps lanæ, cum aqua, held not to come within the exemption provided under section 20, act of June 13, 1898, for "any uncompounded medicinal drug or chemical."

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., March 22, 1899.

SIR: This office is in receipt of a letter under date of March 16, 1899, from Victor Koechl & Co., 122 Hudson street, New York, N. Y., submitting samples of Oscar Liebreich's "Lanoline" and "Adeps lanæ, B. J. D., cum aqua," manufactured by the Benno Jaffé & Darmstaedter Lanoline Works, Martinikenfelde, near Berlin, but imported by Victor Koechl & Co., New York. They state that they are informed that

this office has adopted, as a rule governing it, the decision of Mr. Justice Brown, of the United States court for the southern district of New York, relating to the exemption of certain preparations from the stamp tax, on the ground that they are uncompounded medicinal drugs, as provided for in section 20 of the act of June 13, 1898.

They now submit the samples referred to, and claim exemption from the stamp tax as uncompounded medicinal drugs, according to the lines laid down in the decision of the court.

The decision of Mr. Justice Brown only applies to aristol, europhen, piperazine, protargol, losophen, lycetol, phenacetine, sulfonal, tannigen, tannopine, trional, and salophen—chemical species, having definite and known chemical formulas.

The question decided by Judge Brown was whether, under the statute, there was an incurrence of forfeiture of the twelve articles mentioned above by the failure to affix revenue stamps. He decided against the Government and in favor of the taxpayers, upon the grounds that these articles—

Though complex in composition, each article is proved to be strictly a chemical substance, entity, or unit. In each the peculiar arrangement of the molecules, which give to each of these articles properties and peculiarities distinguishing it not only from its own elementary constituents but from every other known substance.

To this extent this office adopts as a rule governing it, the decision of Judge Brown, and it is sufficient to show that a substance is a single chemical entity, having a known chemical formula, to bring it within the exemption provided under section 20 of the act of June 13, 1898, for "any uncompounded medicinal drug or chemical."

But this decision can have no effect, as to the question at issue, favorable to the claimants. Lanoline and adeps lanæ, differing only in that the latter contains not more than 30 *per cent* of its weight of water, will, in considering their claims to exemption upon the lines laid down in the decision of Mr. Justice Brown, be treated as one—lanoline.

It is a mixture, in *indefinite* proportions, of a number of different chemical compounds, such as cholesterol, iso-cholesterol, etc. It is prepared from wool by treatment with weak alkali, and subsequently separated by adding sulphuric acid, after which it is subjected to a process of purification. It differs from other fats of animal origin in being miscible with water, and while its principal use in pharmacy appears to be as a basis for various ointments, in the literature submitted by Victor Koechl & Co. lanoline is specifically recommended by Professor Frankel, of Berlin, in the treatment of atrophic forms of catarrh, and by Dr. Mackey, of London, in the treatment of rheumatism.

After a careful consideration of all the facts, this office is of the opinion that Oscar Liebreich's "Lanoline" and "Adeps lanæ, B. J. D.,

cum aqua," not being definite chemical entities, and having no chemical formulas, do not come within the exemption provided under section 20, act of June 13, 1898, for "any uncompounded medicinal drug or chemical," and it is so held.

They are, to the contrary, held to be taxable under the statute as proprietary medicinal preparations, both being medicinal, as shown by the literature relating to them, and the former being put up under the name Oscar Liebreich's, in the possessive case, and the latter having the initials of the manufacturers, B. J. D. (Benno Jaffé & Darmstaedter), embodied in its name. * * *

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. C. H. TREAT, *Collector Second District, New York, N. Y.*

(21278.)

Stamp tax—Uncompounded medicinal drugs or chemicals.

Phenacetin and similar uncompounded medicinal drugs or chemicals held not to be compounded as contemplated by section 20, act of June 13, 1898, when, by the addition of starch, lactose, etc., they are placed in pill form for administration.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 15, 1899.

GENTLEMEN: Recently you, in a personal visit to this office, raised the question whether Phenacetin-Bayer is deprived of the exemption from the stamp tax afforded it under section 20 of the act of June 13, 1898, by reason of it being an uncompounded medicinal drug or chemical, when, by the addition of lactose, starch, etc., it is placed in pill form for administration.

You are advised that after a careful consideration, this office is of the opinion that the addition of lactose, starch, etc., to an uncompounded medicinal drug or chemical simply as an excipient in the preparation of a pill does not compound it as contemplated by the statute, and, therefore, does not deprive it of the exemption referred to, and it is so held.

Respectfully, yours, ROBT. WILLIAMS, Jr.,
Acting Commissioner.
Messrs. SHARP & DOHME, *Baltimore, Md.*

(21473.)

Special tax—Kraft's Temperantia.

A fermented malt liquor, though diluted to such an extent as to be called non-intoxicating, is a beverage for the sale of which special tax must be paid under the internal-revenue laws; and when it is sold under a label reading "Kraft's Temperantia Invigorating Tonic," stamp tax must also be paid thereon as a medicinal proprietary preparation under Schedule B, act of June 13, 1898, even when it contains no drugs or medicinal ingredients.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 8, 1899.

SIR: I have received your letter of the 3d instant, relating to the so-called "nonintoxicating" drink called "Kraft's Temperantia," which has been found, by analysis of the chemist here, to be "a very dilute fermented malt liquor, of the weiss-beer type."

As you have heretofore been informed, persons who are engaged in the sale of this beverage must be required to pay special tax as dealers in malt liquors, unless they already hold the requisite special-tax stamps as liquor dealers or malt-liquor dealers, covering such sales,

You ask:

Is it not subject to the stamp tax under Schedule B, act of June 13, 1898, as a medicinal proprietary preparation?

In reply, you are informed that it is when it is sold under the label which you transmitted with your letter, and which reads "Kraft's Temperantia Invigorating Tonic." When thus labeled and sold it is held to be subject to stamp tax as a medicinal proprietary preparation, notwithstanding the fact that it contains no drugs or medicinal ingredients, but is simply a fermented malt liquor. * * *

Respectfully, yours, G. W. WILSON, *Commissioner.*

Mr. W. W. YATES, *Internal Revenue Agent, Philadelphia, Pa.*

(21611.)

Stamp tax—Samples of medicines.

Abridged cautionary notice may be affixed to samples of medicines intended for gratuitous distribution in certain cases.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 18, 1899.

GENTLEMEN: Your letter under date of September 12, 1899, was received. You inclose an envelope in which samples of Laxine Tablets, intended for gratuitous distribution are put up by you, and ask

a ruling whether the words "Free sample" printed thereon are sufficient under the law.

You are advised that the words "Free sample" are not sufficient to entitle the samples to the exemption provided under the ruling in Circular 501, revised, page 7.

This office has held when, owing to the minute size of the package, it is impracticable to print the prescribed cautionary notice legibly and neatly, the following may be substituted therefor:

FREE SAMPLE. Anyone exposing this sample for sale is liable to a fine of \$500 and imprisonment.

When, however, it is impracticable to print the above modification, the following may be substituted therefor: "FREE SAMPLE; penalty for sale, \$500."

It will be observed that this latter modification contains the essentials, the caution and penalty, both of which must be given in order to entitle the sample intended for gratuitous distribution to the exemption referred to.

Respectfully, yours, G. W. WILSON, *Commissioner.*
CASCA LAXINE COMPANY, *Bridgeport, Conn.*

(21612.)

Stamp tax—Medicines furnished by physicians.

Method of computing taxes on medicines furnished by physicians who advertise their ability to cure diseases.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 19, 1899.

SIR: I have the honor to acknowledge the receipt of your letter of the 31st ultimo, inclosing a newspaper slip relative to the liability to the internal-revenue stamp tax of remedies furnished to patients by physicians and companies who advertise in the public prints their ability to cure the various diseases incident to the human body, and requesting to be fully informed as to the rulings of this office on the subject.

In reply, I inclose you a copy of Circular 501, revised, dated January 24, 1899, containing the regulations of this office as to the liability of medicinal preparations to the stamp tax under Schedule B, act of June 13, 1898. On page 5 of said regulations will be found a ruling that the tax is also imposed on the following:

All mixtures or prescriptions by whomsoever sold, the demand for which is created by circulars, circular letters, or public advertisement, and which by reason of such solicitation pass through the mails or express office to the consumer. This includes preparations made by

physicians or other persons who seek patronage by post-office or by printed circulars or advertisement, or who solicit the afflicted by means of classified lists of afflicted persons.

This office having been reliably informed that the method indicated above of soliciting the patronage of the sick and afflicted was being extensively employed throughout the country by physicians who failed to stamp the remedies furnished, the attention of collectors and revenue agents was recently called to the matter, with a view to a more thorough enforcement of the law. The only difficulty in enforcing the law in this respect has arisen from the difference in the manner employed by the advertising physicians in collecting the amount charged for medicines.

In the first place, it must be stated that this office does not assume to tax in any manner the sum received for professional services by any physician.

Among the physicians advertising as above indicated there appear to be three methods of making charges, as follows:

(1) Where a specific charge is made for services and a specific charge is made for the medicines. This case presents no difficulties, as the medicines must be stamped according to the amount charged for them (unless manifestly and intentionally inadequate), and no account made of the services.

(2) Where nothing is charged for the services, and the only charge is made for the medicines. In this case the medicines are to be stamped according to the price fixed by the physicians.

(3) Where the advertising physicians profess to furnish medicines free to patients and only charge for advice. In such a case this office rules that payment for the value of the medicines is included in the sum charged for advice. The amount charged for the medicines can be segregated from the amount charged for advice by the physician making the charges, if he so desires; but if in any case the advertising physician refuses to separate the charges, the whole amount charged will be estimated as the price of the medicines, and the tax will be computed accordingly, under the authority conferred on the Commissioner of Internal Revenue by the provisions of sections 3437, Revised Statutes of the United States.

In conclusion, I will state that where an advertising physician professes only to give advice in regard to the treatment of diseases and furnishes no medicines or remedies, either directly or indirectly, no tax accrues under the internal-revenue laws.

Respectfully, yours, G. W. WILSON, *Commissioner.*

GEORGE H. SIMMONS, M. D.,

Editor Journal of the American Medical Association,

Chicago, Ill.

(21734.)

Stamp tax—Medicinal preparations.

Medicines and medicinal preparations defined.—Claim for “Velvet” molasses candy as a remedial agent takes it out of the category of candies and places it in the category of medicinal preparations.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 4, 1899.

SIR: On July 20, 1899, in pursuance of instructions from this office, you demanded of H. A. Hildreth, 38–48 Batterymarch street, Boston, Mass., return under oath of the quantity of “Velvet” molasses candy removed by him from July 1, 1898, to that time. * * * Thereupon Mr. Hildreth, through his attorneys, Cotton & White, Washington, D. C., requested that the collection of this tax be delayed in order that a brief might be filed in support of his contention that no tax was due on this article. This request for delay was granted, and the attorneys have filed the brief referred to.

You are advised that all medicinal preparations put up in a certain form or advertised in a certain manner are taxable under the law. Numerous medicinal preparations are not taxable; but it is admitted that an article must be medicinal to be taxable at all under Schedule B.

In construing this schedule, it is necessary, first, to inquire as to the meaning of the words “medicine” and “medicinal” as found in the act.

Webster’s Dictionary, the prescribed authority in this Department, in the definition of words thus defines the words “medicine” and “medicinal.”

(1) Medicinal: Having curative or palliative properties; used for the cure or alleviation of bodily disorders; as medicinal tinctures, plants, or springs.

(2) Medicine: *Any substance* administered in the treatment of disease; a remedial agent; a remedy; physic.

Gould’s Medical Dictionary, an acknowledged authority, defines “medicine” broadly as “any substance given for the cure of disease.”

Chambers’ Etymological Dictionary gives the following definitions:

(1) Medicinal: Relating to medicine; fitted to cure or lessen disease or pain.

(2) Medicine: Anything applied for the cure or lessening of disease or pain.

From these definitions it appears that the only rule by which it can be determined whether an article is medicinal is whether it is used for the cure or palliation of pain or disease. The medicinal character of an article can not be determined by its constituent elements, or by commonly received opinion of its merits or qualities. It follows that a manufacturer advertising his products as a cure for any ailment of

the human or animal body thereby places it in the category of medicinal articles.

The Internal Revenue Office, as long ago as October 6, 1873, in administering the former act on this subject, recognized this fact, and ruled as follows in reference thereto (see Internal Revenue Record, vol. 18, p. 114, Special 145):

(6) Articles which are not necessarily or generally medicinal in their character or uses, but which have or are claimed to have medicinal properties and virtues, in order to be subject to the stamp tax must be held out or recommended by the makers or venders by labels, wrappers, handbills, circulars, or otherwise, as remedies or specifics for some disease, diseases, or affections of the human or animal body.

(15) While some articles and substances are used exclusively, or nearly so, in *materia medica*, others are only partially used, employed, or recommended as medicines or medicinal articles. In the latter case, in order to become subject to stamp tax, there must be upon the inclosure containing them, or upon the labels and wrappers accompanying them, or in the circulars, handbills, or other mode used for advertising them, a clear and express claim to patronage, on the score that the article so held out, recommended, or advertised to the public is a medicine, or a medicated or medicinal article, or a cosmetic article.

Messrs. Cotton & White, solicitors for the manufacturer, think this office is bound to inquire and investigate in every case, whether an article is medicinal or not, no matter what medicinal claims are made for a product by a manufacturer, before subjecting said product to taxation. To adopt this suggestion would launch this office upon an unknown sea without chart or guide. What one man would regard as a medicine another would regard as exactly the opposite. Take the question of whisky, for illustration. There is a large class of doctors who think this article is both food and medicine; another class think it is not a food, but has valuable qualities as a medicine, and still another think it is neither a food nor a medicine, but an unmitigated poison at all times. Men will differ in opinion to the end of time, and I think this office took the proper course under the law when it held Duffy's Malt Whisky as a medicinal preparation taxable under Schedule B when it was found to be advertised as a specific for kidney disease, consumption, etc.

As a further illustration that there is no hard and fast rule by which any medicine can be judged, except by the use to which it is put, I will mention the drug opium, which, with its many preparations, is one of the most important of universally recognized medicines. This drug in some of its forms, such as morphia, laudanum, etc., is largely used for purposes of intoxication, and when prepared for smoking is wholly used for such purpose, and not as a medicine at all.

It is believed that this office has adopted the only safe course in ruling that articles usually regarded as foods or beverages become medicinal under the law when advertised as such.

The distinction made by this office between foods recommended as a

diet for persons suffering from certain complaints and foods recommended as a cure for such complaints, in the opinion of counsel, is "too fine for the ordinary mind." This may be true; but the manufacturers of food products have found no difficulty in understanding it and conforming their labels and literature thereto.

Hildreth's Velvet molasses candy becomes liable under the law, mainly because it is advertised to "relieve tickling in the throat," for "indigestion," and for "cough or cold," and also because it is advertised as follows:

VELVET.

H. S. HILDRETH,

38 BATTERYMARCH ST.

The Velvet is indorsed by the medical profession as being one of the very best mild laxatives that can be obtained, and gives relief in cases of distress in the stomach caused by indigestion.

The statement that it is indorsed by the medical profession is not material, except as emphasizing the recommendation of the candy for alleviating certain ailments.

It may seem absurd to counsel to tax molasses candy; but there are quite a number of candies that have always paid tax under this law when recommended for "cough or cold," and if this article is exempted from tax when making such claims, it would carry with it the exemption of all other candies which are advertised in a similar manner.

In conclusion, I am clearly of the opinion that the action of May 22, 1899, holding Velvet molasses candy to be taxable was without error, and it is accordingly adhered to.

You will report the amount of tax due from this company by reason of their failure to stamp this preparation since July 1, 1898, on your next list for assessment.

Respectfully, yours,

G. W. WILSON, *Commissioner*.

Mr. JAS. D. GILL, *Collector Internal Revenue, Boston, Mass.*

(21755.)

Stamp tax—Medicinal preparations.

Any beverage, whether intoxicating or otherwise, may be rendered taxable as a medicinal preparation by designating it as a tonic, if sold under a trade-mark or other claim of proprietorship.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 10, 1899.

SIR: Samuel C. Palmer *et al.*, manufacturers and bottlers of lithiaselter, tonic beer, and Palmer's tonic beer, through their attorney, Leon Tobriner, Washington, D. C., have asked for a reconsideration of the ruling by this office, rendered to you under date of October 2,

1899, in which the above-named preparations are held to be taxable for certain reasons therein stated.

This application for reconsideration is based on the contention (1) that tonic beer is not prepared from any private formula, secret or occult method; (2) that no claims are made for the exclusive right to manufacture this tonic beer; (3) that it is not recommended to the public as a proprietary medicine, or a medicinal proprietary article or preparation, or as a remedy or specific for any disease.

Counsel contends that the word "tonic" applied to this beer is an arbitrary term by which the article is known to the trade and to consumers. It is further contended, in order to render this tonic beer taxable, it must be a tonic, or be held out or sold as a tonic. Further, that because a preparation bears the name tonic, it should not be held to be taxable, when, in fact, it is not such.

Counsel, in conclusion, places the question fairly at issue, when he says:

The whole question hinges on the fact whether "tonic beer" is a "tonic" as contemplated by the act.

Counsel contends, and rightly, too—

If tonic beer is not a tonic, as contemplated by the act, * * * then the fact that it is sold under a trade-mark becomes immaterial.

Under the statute, it is only necessary to show that a preparation is held out or advertised on the label or otherwise as a "tonic" to hold it taxable, if sold under letters patent, trade-mark, or other evidence of proprietorship.

The word "tonic," used in connection with the word "beer," is an adjective, qualifying the word "beer," and is defined by Webster, the prescribed authority in this Department, as follows:

Increasing strength, or tone of the animal system, obviating the effects of debility and restoring healthy functions.

It is manifest, therefore, to make use of the term "tonic beer" is to ascribe to the preparation sold thereunder the medicinal properties set forth in the definition quoted above. This, then, when considered with the fact that the "tonic beer" is put up under a trade-mark, clearly renders the preparation taxable, under the statute.

The medicinal nature of the "tonic beer" can be definitely established by another method, and by evidence furnished by counsel.

The following is taken from the affidavit of George W. Cook, filed by Attorney Tobriner:

That there is no secret in the preparing of same and that the component parts are generally as follows: Sassafras, wintergreen, annis, and gentian or quassia.

By reference to any standard authority, for example, the United States Dispensatory, each of these ingredients will be found to possess medicinal qualities, and, in the case of the latter two, valuable tonic properties will be found ascribed to them.

The fact that "tonic beer" is prepared with well-known medicines, authoritatively stated to have valuable tonic properties, is sufficient in itself to render the preparation taxable under the statute when considered with the fact that it is put up under an acknowledged trade-mark.

In conclusion, I am clearly of the opinion that there has been no new evidence submitted that would warrant any disturbance of the action of October 2, 1899, holding these preparations to be taxable, and, therefore, it is accordingly adhered to.

You will please advise Messrs. Palmer & Johnson, and J. F. Herrmann & Son, Washington, D. C., in accordance with this action, and proceed in the usual way to collect the tax accrued by reason of their failure to properly stamp these goods since July 1, 1898.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. B. F. PARLETT, *Collector Internal Revenue, Baltimore, Md.*

(21802.)

Special tax—Angostura Bitters.¹

The special taxes of a rectifier and liquor dealer are not required to be paid for the manufacture and sale of Angostura Bitters that are a mere alcoholic extract, suitable only for use medicinally or in giving an agreeable flavor to beverages.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 23, 1899.

SIR: Your letter of the 30th ultimo, replying to the letter from this office dated the 23d ultimo, concerning the special-tax liability of C. W. Abbott & Co., of Baltimore, as rectifiers and liquor dealers for manufacturing and selling Angostura Bitters, has been received, inclosing a statement made by that company setting forth that their "Angostura Bitters is an extract pure and simple," and that "a bottle of Angostura flavors between three and four hundred drinks." They further say:

As it is used by some in mixing cocktails, or with other liquors, we do not think it should work to either the disadvantage of a soda-water bottler or ourselves when you recall that Jamaica ginger, essence of peppermint, celery extract, and other alcoholic extracts are used in the same manner.

The label used on bottles of this compound holds it out as a medicine in the following terms:

For disorders of the digestive organs, for weakness and distress of stomach and bowels, "Abbott's Angostura" is an unequalled preventive and cure.

¹Angostura Bitters put up as herein described are, of course, taxable as a medicinal proprietary article.

It further appears from this label that even when this compound is used in beverages only a few drops are used therein, for the purpose merely of giving an agreeable flavor to the drink.

Upon these facts it is held, and you may so inform C. W. Abbott & Co., that the special taxes of a rectifier and liquor dealer are not required to be paid for the manufacture and sale of these Angostura Bitters under the label herein referred to.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. B. F. PARLETT, *Collector Internal Revenue, Baltimore, Md.*

(21833.)

Stamp tax—Medicinal preparations.

Distilled water held to be entitled to exemption from tax even if advertised as a remedy or cosmetic.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 7, 1899.

SIR: Your letter under date of September 26, 1899, was received. You inclose a brief *in re* Aërated Distilled Water Company, Denver, Colo., submitted by George Q. Richmond, attorney at law, People's Bank Building, Denver, Colo., together with an affidavit in support thereof by N. O. McClees, manager of said company.

It appears that the Aërated Distilled Water Company are placing on the market unstamped what is stated to be an aërated distilled water, produced by converting ordinary hydrant or stream water into steam, and recondensing it into water, thereby, it is alleged, destroying all disease-producing germs and impurities. This hydrant or stream water so treated is thereafter bottled and labeled as follows:

AËRATED DISTILLED WATER.

Absolutely pure. Preserves health. Lengthens life. Softens the complexion.

Directions:

For the complexion Aërated Distilled Water may be used hot in place of steaming. The prevalent idea that washing the face is bad for the complexion is due to the bad effects of hard water when employed for that purpose. Distilled water and good soap are better for purifying and preserving the complexion, scalp, and hair than any other agents.

In the booklet submitted, the following appears:

As a remedy. Eminent physicians tell us that not only can disease be prevented by the use of pure water, but many can also be cured by its free use. Particularly is this true of malaria, nervousness, kidney diseases, rheumatism, dyspepsia, and indigestion.

While counsel admits that this water is advertised to preserve health, lengthen life, and soften the complexion, he contends it should be classified as a food preparation.

Upon careful consideration of all the facts submitted in this case, I am of the opinion that if the article put upon the market as aerated distilled water is a distillate of common hydrant, creek, or river water, without the addition of any other substance, either before the process of distillation is commenced, during the process of distillation, or after the process of distillation is complete, that, irrespective of whatever remedial claims are made for it, it is nevertheless an uncompounded medicinal article, having a definite and known arrangement of molecules, H_2O , and, therefore, under the construction placed upon the law by Mr. Justice Brown of the United States district court for the southern district of New York, it is entitled to the exemption provided under section 20, and it is so held.

Nor is aerated distilled water liable to stamp duty under the fifth paragraph of schedule B, because it is neither perfumery or a cosmetic, nor is it similar to these articles, or known or designated as such in commercial transactions.

Respectfully, yours,
Mr. F. W. HOWBERT;

G. W. WILSON, *Commissioner.*

Collector Internal Revenue, Denver, Colo.

MORTGAGES.

(See also CONVEYANCES; and DECISIONS 20676, p. 53; 20788, p. 86; 20793, p. 237; 20796, p. 89; 21583, p. 103; 21620, p. 65.)

(20724.)

Stamp tax—Chattel mortgages.

Yearly renewals of chattel mortgages, by affidavit, under law of Michigan, do not require stamps.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 20, 1899.

SIR: I have the honor to acknowledge the receipt of the letter of Mr. Geo. A. Hart, of Manistee, Mich., written to you under date of February 1, 1899, and by you referred to this office for consideration.

The question submitted by this gentleman relates to the taxability of instruments used in the State of Michigan in connection with chattel mortgages as renewal affidavits. These affidavits are provided for in section 6196, Howell's Annotated Statutes, which reads as follows:

Every such mortgage shall cease to be valid, as against the creditors of the person making the same, or subsequent purchasers or mort-

gagees in good faith, after the expiration of one year from the filing of the same, or a copy thereof, unless within thirty days next preceding the expiration of the year the mortgagee, his agent or attorney, shall make and annex to the instrument or copy on file as aforesaid an affidavit, setting forth the interest which the mortgagee has, by virtue of said mortgage, in the property therein mentioned; upon which affidavit the township or city clerk shall indorse the time when the same was filed: *Provided*, That such affidavit being made and filed before any purchase of such mortgage property shall be made, or other mortgage received or lien obtained thereon in good faith, shall be as valid to continue in effect such mortgage as if the same were made and filed within the period as above provided.

Section 6197 provides as follows:

The effect of any such affidavit shall not continue beyond one year from the time when such mortgage would otherwise cease to be valid, as against subsequent purchasers or mortgagees in good faith; but within thirty days next preceding the time when such mortgage would otherwise cease to be valid as aforesaid, a similar affidavit may be filed and annexed, as provided in the preceding section, and with like effect.

The former ruling of this office upon these instruments was that, when taken in connection with the chattel mortgage itself, they were subject to taxation as new mortgages. This ruling has been objected to on the ground that these instruments do not change or alter in any respect the chattel mortgage in reference to which they are required to be filed.

The following is the form of instrument used in the State of Michigan:

Chattel mortgage renewal affidavit.

STATE OF MICHIGAN, }
COUNTY OF ———, } ss:

———, of ———, being duly sworn, deposes and says he is the owner of a certain chattel mortgage, given by ——— to ———, dated the ——— day of ———, A. D. 189—, and filed in the office of the ——— of ——— in said county, on the ——— day of ———, A. D. 189—, at ——— o'clock —. M.; that he makes this affidavit for and in behalf of ———, being acquainted with the facts; that there is due and remaining unpaid on said mortgage the sum of \$—— and interest from ———, which said sum constitutes the interest of said ——— in the property in said mortgage mentioned and described, and said mortgage is hereby renewed for the amount above written. Further deponent saith not.

Subscribed and sworn to before me this ——— day of ———, A. D. 189—.

_____.

The following claims are made in reference to the above instrument:

First, they are required only to protect the interest of the mortgagee in the mortgaged property as against the creditors of the mortgagor or subsequent purchasers or mortgagees in good faith, and do not affect the rights as between the original parties.

Second, these instruments are required annually, whether the mortgage has matured or not.

Third, these so-called renewals do not extend the time of payment of the amount secured by the mortgage. If the mortgage is otherwise due the mortgagee can commence proceedings to collect the same immediately after filing the above instrument.

Fourth, these instruments are inadvertently called renewal affidavits, but they do not renew the mortgage within the intent and meaning of the revenue law of June 13, 1898.

After carefully reconsidering the former ruling of this office, wherein these instruments were held to be subject to taxation as new mortgages when considered in connection with the original instrument, it has decided to revoke the former decision.

You are, therefore, advised that this office now holds that no taxation accrues on these instruments as new mortgages unless under them the mortgage, after its expiration, is in law and in fact actually renewed. In other words, if the status between the parties to the original instrument is not changed there is no tax, and this office does not consider such a change to have taken place when it appears in the filed affidavit that the mortgage has been reduced by the payment of a sum of money.

Respectfully, yours, N. B. SCOTT, *Commissioner*.
Hon. J. C. BURROWS, *United States Senate*.

(20795.)

Stamp tax—Mortgages, etc.

Act amending Schedule A relating to stamp tax on mortgages, and bonds and notes secured thereby.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 7, 1899.

To collectors and other officers of internal revenue:

Special attention is called to the appended act of Congress, approved February 28, 1899, amending Schedule A of the act of June 13, 1898, known as the war-revenue act.

G. W. WILSON, *Commissioner*.

Joint Resolution to amend section twenty-five of the Act passed June thirteenth, eighteen hundred and ninety-eight, entitled "An act to provide ways and means to meet war expenditures, and for other purposes."

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That an Act passed June thirteenth, eighteen hundred and ninety-eight, entitled "An act to provide ways and means to meet war expenditures, and for other purposes," be amended by adding to the end of Schedule A, section twenty-five, the following: "Whenever any bond or note shall be

secured by a mortgage, or deed of trust, but one stamp shall be required to be placed upon such papers: *Provided*, That the stamp tax placed thereon shall be the highest rate required for said instruments, or either of them."

Approved, February 28, 1899.

(20797.)

Stamp tax—Taxation on copies of mortgages.

When the instrument is simply a copy, no taxation accrues. If it is in duplicate, triplicate, etc., each having the same legal effect as the original, it is subject to taxation as an original mortgage.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 7, 1899.

SIR: I have the honor to acknowledge the receipt of your letter of March 1, 1899, in which you submit a letter from Mr. Geo. Hefferan, agent of the Michigan Trust Company, of Grand Rapids, Mich., under date of February 28.

The question submitted by this gentleman is briefly stated as follows: Are copies of mortgages subject to taxation the same as the original instruments under the requirements of section 14 of the act?

The question of taxation of copies of mortgages has been carefully reconsidered by this office. The section in the law to be construed in this respect reads as follows:

That hereafter no instrument, paper or document required by law to be stamped which has been signed or issued without being duly stamped, or with a deficient stamp, *nor any copy thereof*, shall be recorded or admitted, or used as evidence in any court until a legal stamp, or stamps, denoting the amount of tax shall have been affixed thereto, as prescribed by law.

The reconsidered opinion of this office is as follows:

That the words "nor any copy thereof," used in connection with the whole of section 14, mean that if the original instrument is not duly stamped no copy thereof shall be recorded or admitted in evidence.

By parity of reasoning, if the original instrument is duly stamped the copy need not be stamped in addition to the stamp on the original instrument.

In regard to the construction of the word "copy," you are informed that this office holds that it must be nothing more than a copy. If it is a duplicate or triplicate, etc., of the original instrument, and is executed and issued as a duplicate, triplicate, etc., each having the same legal effect as the other or others executed and issued, it is, in so far as the war-revenue law is concerned, an original, and should be stamped as such.

You will thus plainly see that each case arising under this question is to be determined according to the legal effect of the instrument executed as to whether or not a taxation accrues.

You are further informed that when an instrument is not operative as an original, being simply a copy, it should have indorsed thereon the fact that it is a copy and that the original instrument is duly stamped.

This is required for the information of all concerned, namely, recorders, officers of the internal revenue, and other parties. This indorsement becomes notice to them that there is a contemporaneous instrument which is the original document, and the only one liable to the stamp duty, and that the said instrument is duly stamped.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Hon. WILLIAM ALDEN SMITH, *Grand Rapids, Mich.*

(20838.)

Stamp tax—Deeds and mortgages.

A deed or mortgage executed and delivered prior to July 1, 1898, is subject to stamp tax when offered for registration after that date in States where, by State law, registration is necessary to pass title or establish valid lien.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 10, 1899.

SIR: Revenue Agent Williams, under date of the 3d instant, reported the case of a mortgage from the Tubular Despatch Company to the Central Trust Company, of your district, for \$600,000 to cover an issue of bonds to the same amount, which mortgage is not stamped.

He referred to the fact that the law firm of Sackett, Bacon & McQuaid, 154 Nassau Street, had prepared the mortgage and claimed that it is not liable to duty because of the fact that it was dated July 1, 1897, but not recorded until July 22, 1898.

Revenue Agent Williams suggested that, under the former ruling of this office, the instrument in question was liable to stamp duty to the amount of \$299.50.

The ruling referred to was based upon an opinion of the honorable Assistant Attorney-General. It has been found necessary to modify it as follows: A deed or mortgage executed and delivered prior to July 1, 1898, is subject to stamp tax when offered for registration after that date in States where, by State law, registration is necessary to pass title or establish valid lien.

When instruments executed prior to July 1, 1898, pass title or establish lien, without registration, they do not require a stamp.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. CHAS. H. TREAT,
Collector Internal Revenue, New York, N. Y.

(20917.)

Stamp tax—Bond and mortgage.

Tax and application of same on bond and mortgage given by a private person subsequent to February 27, 1899, and considered under the amendment to Schedule A, approved February 28, 1899.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., March 25, 1899.

SIR: This office is in receipt of a letter under date of March 11, 1899, from E. L. Dobbins, secretary of the Mutual Benefit Life Insurance Company, 752 Broad street, Newark, written in reference to the question of taxation of a bond executed by a private person, said bond being secured by a mortgage.

Please inform this gentleman that the ruling in relation to a bond secured by a mortgage given by a private person in lieu of a promissory note is taxable as a promissory note and not as a bond has been revoked by this office. Following the advice of the Attorney-General, a bond secured by a mortgage, when given by a private person, is to be considered as a bond and not as a promissory note. If these instruments are executed subsequent to February 27, 1899, the act of Congress approved February 28, 1899 (as follows) is applicable:

Wherever any bond or note shall be secured by a mortgage or deed of trust, but one stamp shall be required to be placed upon such papers: *Provided*, That the stamp tax placed thereon shall be the highest rate required for said instruments, or either of them.

Under this amendment to Schedule A the bond of a private person secured by a mortgage would be subject to taxation if the amount of money secured does not exceed \$1,500, because up to this amount the greater tax accrues on the bond, said tax being 50 cents, the mortgage not being subject to a 50-cent tax unless the amount secured exceeds \$1,500 and does not exceed \$2,000. When the amount secured exceeds \$1,500 and does not exceed \$2,000, the tax is equal, and when this occurs the mortgage should be stamped and not the bond, but the bond should have an indorsement that the mortgage has been duly stamped as required by law. * * *

Respectfully, yours,

G. W. WILSON, *Commissioner.*

Mr. H. C. HEROLD, *Collector Internal Revenue, Newark, N. J.*

(20981.)

Stamp tax—Bonds and mortgages.

Act of February 28, 1899, not retroactive.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 5, 1899.

SIR: Under date of March 25, Sperry, Jones & Co., 408-414 Equitable Building, Baltimore, Md., addressed this office relative to stamps affixed to bonds of the Maryland Brewing Company, which bonds are still held by the company. They call attention to the fact that an act of Congress exempts bonds from the stamp tax when the mortgage securing them is duly stamped, and they ask what steps shall be taken to recover the value of the stamps.

Please inform them that if the stamps were affixed and canceled prior to February 28, 1899, this office can grant no relief, as the act of February 28, 1899, is not retroactive, and the bonds and mortgage were documents of a nature requiring stamps at the time the said stamps were affixed.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Mr. B. F. PARLETT,
Collector Internal Revenue, Baltimore, Md.

(21314.)

Stamp tax—Mortgages.

Taxation of conveyances of realty sold subject to mortgage.—Decision of Judge Taft in United States circuit court for southern district of Ohio considered.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 22, 1899.

SIR: Your letter of March 27, 1899, inclosing copies of deeds in the case of the Central Trust Company of New York *v.* The Columbus, Hocking Valley and Toledo Railway Company and others, has been received and considered in connection with the ruling of Judge Taft in this case, that in the sale under foreclosure the deed only is required to be stamped on the basis of the amount paid for the equity of redemption, and not on the basis of the entire value of the realty, the railroad being sold subject to certain prior mortgages which were not foreclosed, but remained liens on the property.

The ruling of this office in regard to taxing deeds for realty sold subject to mortgage is as follows:

A conveyance of realty sold subject to a mortgage should be stamped according to the consideration or the value of the property unencum-

bered. The consideration in such case is to be found by adding the amount paid for the equity of redemption to the mortgage debt. The fact that one part of the consideration is paid to the mortgagor and the other paid to the mortgagee does not change the liability of the conveyance. This refers to a case where the grantee assumes and becomes personally liable for the mortgage.

In the deed ruled upon by Judge Taft the purchasers assume no personal liability for the subsisting prior mortgages; on the contrary, it is stipulated in the deed that, "it is hereby understood and agreed that no personal covenant or liability is to be implied from this deed against any of the parties hereto."

This being the case, this office has reached the conclusion that there is no substantial difference between the ruling of this office and the ruling of Judge Taft, and it will not be necessary or expedient to contest the same.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Mr. WILLIAM E. BUNDY,
United States Attorney, Cincinnati, Ohio.

(21400.)

Stamp tax—Bonds and mortgages.

Opinion of the honorable Attorney-General relative to the stamping of bonds secured by mortgages or deeds of trust issued by corporations under act of June 13, 1898, as amended by act of February 28, 1899, and ruling of the Commissioner of Internal Revenue thereunder.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 18, 1899.

SIR: I inclose you herewith copy of the opinion of the honorable Attorney-General in reference to the taxing of bonds secured by mortgages made by the Baltimore and Ohio Railroad Company, said bonds to be issued from time to time as provided in said mortgages.

In accordance with the opinion of the Attorney-General, which has this day been received, this office rules that a mortgage or deed of trust given to secure bonds, which are to be issued from time to time by any company, corporation, or association, is valid so far as stamp taxes are concerned, although no stamp is affixed thereto, if the bonds secured thereby are stamped as issued at the rate of 5 cents for each \$100 or fraction thereof.

Under this opinion, it will be seen that it is permissible to affix the necessary stamps either to the mortgage or to the bonds, as parties may elect.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Hon. JOHN K. GOWEN,
President Baltimore and Ohio Railroad Co., Baltimore, Md.

[Opinion of Attorney-General.]

DEPARTMENT OF JUSTICE,
Washington, D. C., July 17, 1899.

SIR: I have the honor to acknowledge the receipt of yours of May 13, 1899, inclosing a copy of a letter from the Commissioner of Internal Revenue, requesting my opinion as to the stamps required on a mortgage proposed to be executed by the Baltimore and Ohio Railroad Company and certain bonds the payment of which is to be secured thereby.

These are the facts:

The directors and stockholders of the Baltimore and Ohio Railroad Company have approved the execution by the company of prior lien bonds to the amount of \$75,000,000, and the securing of the same by mortgage deed of trust to the Mercantile Trust Company of New York, trustee. Of this issue, bonds to the amount of \$70,000,000 are to be presently issued and sold, and \$5,000,000 are reserved in the hands of the trustee, to be issued and sold after 1902, at the rate of \$1,500,000 per year. The directors and stockholders of the railroad company have also approved and authorized the issue of first mortgage 4 per cent bonds of the company to the amount of \$63,000,000, secured by mortgage deed of trust to the United States Trust Company of New York, of which bonds \$50,000,000 are to be presently issued and sold; \$6,000,000 are reserved to take up a like amount of bonds of the Baltimore Belt Railroad Company, should the Baltimore and Ohio Railroad Company exercise its option to do so, and \$7,000,000 are reserved to be hereafter issued and sold for the purpose of acquiring new equipments or otherwise adding to the mortgaged property.

In and by the mortgage deed of trust to the United States Trust Company the railroad company reserves the right to issue hereafter, for certain specified purposes, additional bonds to the amount of \$27,000,000, and it is provided that if and when these additional bonds are issued they shall be entitled to the security of the mortgage deed of trust *pari passu* with the other bonds issued thereunder. Neither the directors nor stockholders of the railroad company have approved or authorized the issue of these additional bonds.

Upon these facts the Commissioner of Internal Revenue in his letter to you submits these three interrogatories:

"(1) Must the stamps in this case be affixed to the bonds or to the mortgages?"

"(2) If to the bonds, can such stamps be affixed to the bonds as issued, or can they be affixed to the mortgages as the bonds are issued?"

"(3) If the stamps are to be affixed to the mortgages, must the amount of the same be equal to the entire tax on the bonds provided for by said mortgages?"

The several provisions of law involved in the consideration of the questions are:

That portion of the first paragraph of Schedule A of the act of June 13, 1898, which reads as follows:

"Bonds, debentures, or certificates of indebtedness issued after the first day of July, anno Domini eighteen hundred and ninety-eight, by any association, company, or corporation, on each hundred dollars of face value or fraction thereof, five cents."

That part of Schedule A which says:

"Mortgage or pledge, of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a

security for the payment of any definite and certain sum of money, lent at the time or previously due and owing or forborne to be paid, being payable; also any conveyance of any lands, estate, or property whatsoever, in trust to be sold or otherwise converted into money, which shall be intended only as security, either by express stipulation or otherwise; on any of the foregoing exceeding one thousand dollars and not exceeding one thousand five hundred dollars, twenty-five cents; and on each five hundred dollars or fractional part thereof in excess of fifteen hundred dollars, twenty-five cents."

The following resolution of Congress, approved February 28, 1899:

"That an Act passed June thirteenth, eighteen hundred and ninety-eight, entitled 'An act to provide ways and means to meet war expenditures, and for other purposes,' be amended by adding to the end of Schedule A, section twenty-five, the following: 'Whenever any bond or note shall be secured by a mortgage, or deed of trust, but one stamp shall be required to be placed upon such papers: *Provided*, That the stamp tax placed thereon shall be the highest rate required for said instruments or either of them.'"

And also section 15 of the act of June 13, 1898, which is as follows:

"That it shall not be lawful to record or register any instrument, paper, or document required by law to be stamped unless a stamp or stamps of the proper amount shall have been affixed and canceled in the manner prescribed by law; and the record, registry, or transfer of any such instruments upon which the proper stamp or stamps aforesaid shall not have been affixed and canceled as aforesaid shall not be used in evidence."

The main question presented by the facts in this case, and interrogatories submitted thereon by the Commissioner of Internal Revenue, is as to the amount of stamps required under the provisions of the war-revenue act, at the time the mortgage is offered for registration, upon the transaction described.

There is no trouble in arriving at the amount of tax required upon a bond for a certain sum, because that is definitely ascertained by the statute, being governed by the sum stated in the face of the bond. The difficulty, if there be any, in the present case arises because the property conveyed in the mortgage is not in fact security at the time the mortgage is offered for registration for the payment for the full amount of bonds provided for, the issue of some of the bonds being made dependent upon future contingencies. If the company, by the action of its directory, decides to issue at one time bonds to a definite amount, and at the same time executes a mortgage upon its property as security for the payment of these bonds as they become due, the stamp tax required could be readily estimated. But in the matter under consideration such is not the case. Certain of the bonds provided for in the mortgage are ready to be issued at the time the mortgage is offered for registration; certain others of the bonds are held in reserve by the company, and the issue of still others depends upon future contingencies, which may or may not happen. The law says that the instrument which is taxable is a *mortgage of lands, estate, or property, etc.*, where the same shall be made as a security for the payment of any definite and certain sum of money *lent at the time or previously due and owing or forborne to be paid, being payable*. Evidently the law intended to determine the amount of tax to be paid upon a mortgage by the amount of debt actually incurred and existing, and for the payment of which the property conveyed is security. Certainly a bond, though prepared and signed, still in the possession of the obligor, unissued, and which

may never be issued, is not a debt or an obligation. Such bond can not be construed as an evidence of a *definite and certain sum of money lent at the time or previously due and owing or forborne to be paid, being payable*. In such instances the bond is operative when it is issued and goes into the hands of a lender or purchaser, and is held as evidence of an obligation to pay the sum of money indicated by its terms.

I do not deem it necessary to discuss the question as to bonds provided for in the mortgage to be issued or not as the future action of the mortgagor may be determined. My conclusions above apply and such bonds can not, until they are issued, be the subject of taxation or an element in estimating the amount of stamps required for the mortgage.

Under the provisions of the war-revenue act relative to bonds and mortgages executed as security for the payment of the same, both the mortgage and the bond were taxable, and consequently, in cases like the one under consideration, it was with some difficulty that a definite ruling could be established, more particularly because the mortgage required stamps to a certain amount and the bonds stamps of a different amount.

Now, under the resolution of Congress approved February 28, 1899, above quoted, which is an amendment to the provisions of the war-revenue act in respect to mortgages and bonds and notes secured thereby, the stamp is not required upon each of the instruments, but only upon the transaction evidenced by both instruments, the amount of said stamp to be the highest rate for said instruments or either of them. This amendatory resolution not only changes the law so as to require but one stamp, but upon a perusal of the same it will be seen that it provides that this one stamp may be placed on either of the papers, the language of the law being this:

"Whenever any bond or note shall be secured by a mortgage, or deed of trust but one stamp shall be required to be placed *upon such papers*."

It seems that there can be but one conclusion as to the meaning of this language, and that is that the placing of the requisite stamp upon either of the papers fulfills the requirements of the law, such stamps being of the highest rate required by said papers or either of them.

The only provision of law I find which appears to stand in the way of this conclusion and its practical application is section 15 of the war-revenue act, copied above. It will be observed that this section says:

"That it shall not be lawful to record or register any instrument, paper, or document required by law to be stamped unless a stamp or stamps of the proper amount shall have been affixed and canceled in the manner prescribed by law."

Anterior to the resolution of February 28, 1899, when, as I have stated before, both the mortgage and bond or note for which it was given as security were subject to tax, a mortgage offered for registration should have had the proper stamp affixed and canceled. But now, when the law is so amended as to require only one stamp upon two separate papers which constitute one transaction, it is my opinion that the purposes of the law are fulfilled when the stamp in proper amount is affixed to either and canceled. I have used the expression "two separate papers" above in contemplation of the fact that in ordinary business transactions one bond or note is given to evidence a debt and a mortgage executed to secure the same; but the same principle will apply where the debt or obligation is evidenced by several bonds secured to be paid by the mortgage.

I think that I have sufficiently covered the ground and have answered the several questions propounded by the Commissioner of Internal Revenue.

Respectfully,

JAMES E. BOYD,
Acting Attorney-General.

The SECRETARY OF THE TREASURY.

(21471.)

Stamp tax—Bonds secured by mortgages.

Where a mortgage or deed of trust secures more than one bond or note the total tax accruing on all the bonds or notes should be compared with the tax accruing on the mortgage or deed of trust, and the stamp representing the highest tax may be affixed to either the bonds or notes, as the parties may elect.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 7, 1899.

SIR: This office is in receipt of your letter of June 28, 1899, transmitting a communication from Mr. C. F. Tucker, Dallas, Tex., relative to the stamping of notes secured by mortgages. * * *

Your attention is called to the opinion of the honorable Attorney-General relative to the stamping of bonds or notes secured by mortgages under the act of June 13, 1898, as amended by the act of February 28, 1899. (See Treasury decision 21400, page 205.)

In accordance with this opinion, this office rules that whenever the same mortgage secures more than one note the comparison should be made between the total tax accruing on all of the notes and the tax accruing on the mortgage, and the stamp representing the highest tax required by said instruments, or either of them, may be affixed either to the mortgage or the notes, as parties may elect.

In computing the tax accruing on a mortgage note, you are advised that, if the interest coupons attached to the note are in the form of promissory notes, the tax accruing on said interest notes should be added to the tax accruing on the principal note, and the total then compared with the tax accruing on the mortgage securing the same.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Mr. P. B. HUNT, *Collector of Internal Revenue, Dallas, Tex.*

(21519.)

Stamp tax—Conveyance of realty subject to mortgage.

Method of computing taxation on real property subject to mortgage.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 17, 1899.

SIR: I have to acknowledge the receipt of your letter of the 25th ultimo, in reference to real property conveyed subject to a mortgage.

In reply, I have to say that the ruling of this office on this subject is as follows: When real property is conveyed subject to a mortgage, if the deed conveying the same contains any covenant or statement that the grantee assumes the mortgage and becomes liable thereby for a deficiency judgment in case of foreclosure, then the amount of the mortgage is to be added to the value of the equity of redemption in determining the consideration on which the stamp tax is to be based. However, if there is no covenant or statement in the deed whereby any liability of the grantee for the payment of the mortgage can be implied, then the consideration is to be based only on the value of the equity of redemption.

Please inform the honorable recorder of deeds that the ruling contained in Treasury decision 19932,¹ in reference to real estate conveyed subject to a mortgage, has been modified as above stated.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. E. H. BONSALE,
*Second Vice-President Land, Title and Trust Company,
Philadelphia, Pa.*

(21621.)

Stamp tax—Conveyances of real property.

Taxation of conveyances of real property where a mortgage is given to the grantor by the grantee at the time of conveyance for part of the purchase price.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 22, 1899.

SIR: I have to acknowledge the receipt of your letter of September 20, 1899, inclosing a letter from Mr. Howard Thayer Kingsbury, of 20 Nassau street, New York City, in regard to the conveyance of real property where a mortgage is given to the grantor by the grantee at the time of conveyance for part of the purchase price.

You are advised that the former published rulings of this office, relative to real property conveyed subject to a mortgage, have no reference to cases where the grantee is the original mortgagor. In a deed of this kind the taxable consideration will always include the amount of the mortgage, as well as the part of the purchase price paid in cash, and the deed must be stamped accordingly. The mortgage given as part of the purchase price is taxable in itself the same as any other mortgage, subject to the amendment of February 28, 1899. If the amount of tax accruing on the mortgage is greater than that accruing on the note secured thereby, the amount of stamp tax re-

¹ Compilation of Decisions Rendered by the Commissioner of Internal Revenue under the War-Revenue Act of June 13, 1898 (January, 1899), page 231.

quired is to be computed according to the amount of tax due on the mortgage only, and the stamp may be applied to either instrument as parties may elect.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. CHAS. H. TREAT, *Collector Internal Revenue, New York, N. Y.*

(21667.)

Stamp tax—Conveyance in nature of mortgage and “bond to reconvey” used in the State of Georgia.

The conveyance used under the statutes of the State of Georgia in cases where the payment of a debt is secured by pledging of real estate is taxable under the paragraph in Schedule A relating to mortgage or pledge.—The “bond to reconvey” is subject to a tax of 50 cents.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 14, 1899.

SIR: This office is in receipt of a letter, under date of the 3d instant, from Messrs. Gignilliat & Stubbs, attorneys at law, Savannah, Ga., in which these gentlemen inclose a form of instrument used in the State of Georgia by conveyancers in cases where the owner of real estate places an incumbrance upon the same by way of an equivalent to a mortgage.

It appears that under the statutes of the State of Georgia the owner of real estate conveys the same direct to the lender of the money, or the party to whom the debt is due, in fee simple, and the party to whom the real estate is conveyed gives a bond to reconvey the same when the debt is paid.

While the first instrument herein referred to is a conveyance, it is not such an instrument as is taxable under the paragraph in Schedule A relating to conveyances. The document creates the relationship of mortgagor and mortgagee, and is in effect a mortgage and is taxable under that paragraph in Schedule A relating to mortgages or pledges, and when the indebtedness does not exceed \$1,000 this document is not subject to taxation; when it exceeds \$1,000 and does not exceed \$1,500, the tax accruing is 25 cents; for each additional \$500 or fractional part thereof in excess of \$1,500, 25 cents.

If the indebtedness is represented by a note secured by this instrument, the instruments being executed subsequent to the passage of the amendment to Schedule A, approved February 28, 1899, only one tax accrues, and it is the greater one found to accrue respectively on the instruments executed. The amendment is as follows:

Whenever any bond or note shall be secured by a mortgage, or deed of trust, but one stamp shall be required to be placed upon such papers: *Provided*, That the stamp tax placed thereon shall be the highest rate required for said instruments, or either of them.

The "bond to reconvey" given by the grantee or lender to the grantor or borrower is subject to taxation at the rate of 50 cents. It is not to be considered under the above amendment.

Respectfully, yours,

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

MR. H. L. RUCKER, *Collector Internal Revenue, Atlanta, Ga.*

(21780.)

Stamp tax—Transfers of mortgages.

Statute relative to taxability of transfers of mortgages construed.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 17, 1899.

SIR: I have to acknowledge the receipt of your letter of the 11th instant, inclosing letter of Messrs. Pratt, Dana & Black, of your city, asking a ruling relative to the transfer or assignment of mortgages under Schedule A of the act of June 13, 1898. Letters have also been received on the same subject from several other parties in your city, viz: J. D. Robertson, president Interstate National Bank; Garland M. Jones, attorney; Chicago Live Stock Commission Company; J. G. Streat, cashier National Bank of Commerce; R. F. Porter, attorney, and Harwood & Meredith, attorneys. These letters have presumably all been caused by a recent ruling of Judge Woolson, of the United States district court at Keokuk, Iowa, with respect to the transfers or assignments of mortgages, where the assignment or transfer is not express, but only by implication or operation of law. It appears that this ruling was not a written one, but made verbally on a question of the admissibility of evidence.

This office has received, through the clerk of the court, what seems to be an authentic statement of the position of Judge Woolson in this matter. The facts are not stated in much detail, but sufficient appears to show that one Gillett, in Kansas, gave his promissory note for a sum of money secured by chattel mortgage on some cattle. This note passed by various indorsements to the Bank of Orion, an Illinois corporation, and the plaintiff in this case, the last indorsement being in blank. According to the law in most, if not all, the States, the assignment of a debt secured by a mortgage carries with it the security.

The mortgage and note in this case were apparently duly stamped when originally executed; but Schedule A provides that upon each and every assignment or transfer of a mortgage a stamp duty shall be required and paid at the same rate as that imposed on the original instrument. It appears that this mortgage had not been stamped as an implied transfer, and when the said plaintiff, wishing to avail itself

of its security, offered the same in evidence, it was objected to, and ruled out by Judge Woolson as incompetent, because it had not been stamped for the transfer.

The crucial part of the judge's opinion is contained in the following language, which appears in the statement before alluded to:

Here are two contracts entirely separate. One, the note, contracts to pay a sum or debt. Now, that is a good contract if no mortgage secures it. The other contract is the mortgage, contracting or pledging that certain property shall stand good for the other contract or note. I may transfer the note and not the mortgage, if such is my express contract with my assignee. If I transfer merely the note or debt contract, no restamping is necessary, according to the law. My transfer, then, merely gives the ownership of the debt and the right to enforce it to my assignee.

The chattel mortgage in this case is a Kansas contract; it was executed there, and it provides for being enforced there. The Kansas statute declares that the owner of a chattel mortgage is the holder of the legal title and right to possession of the property mortgaged. That means here that before the assignment or transfer of the chattel mortgage to the Bank of Orion, which now holds it, the Kansas persons then owning were "the holders of the legal title to the cattle mortgaged." When these Kansas people transferred to the Bank of Orion the note, they transferred (although by operation of law) the chattel mortgage. That transfer thus made the Bank of Orion the holder of the legal title to the cattle mortgaged. Instead of such legal title remaining with these Kansas people or assignees, it passed to the Bank of Orion; and every time this chattel mortgage is assigned or transferred there is thereby passed to the assignee the legal title, which theretofore the assignor had held, to the cattle mortgaged.

Under this statement it would appear that such transfer of legal title ought to bear revenue stamps accordingly. If such is not the law, a manifest oversight has occurred.

I am not able to concur in the opinion of Judge Woolson, and some of the reasons for my dissent are stated below:

It is to be presumed that Congress made its laws with reference to the business of the country, and did not intend to make enactments impossible of execution. To tax the implied transfer of chattel mortgages, where it has become the practice to go into the open market and sell the notes secured thereby, would render it necessary to tax each and every transfer. Suppose the mortgage should secure a half dozen notes, and each note should be indorsed by the original holder to a separate party, and each indorsee, disposing of his interest, should again indorse it over to another until each note should pass through the hands of six different holders, would it not be very difficult, if not impossible, to collect tax from thirty-six different transferers of the same instrument, and how is the \$1,000 exempt from tax to be apportioned among all the transferers?

Again, take the instance of the bonds issued by corporations in this country, vast in number and vast in amount. All of these bonds are secured by mortgages or deeds of trust. There is no doubt that each

transfer of bonds carries with it the security pledged therefor. Then, according to Judge Woolson's doctrine, in a case where a man buys one thousand dollars' worth of bonds secured by mortgage, the mortgage is transferred to him *pro tanto*, and a tax accrues as a transfer therefor. Is such a construction of the law possible of execution? To state the question is to answer it. All laws must be reasonably construed.

I therefore rule that Congress intended only to tax the express assignments and transfers of mortgages, and not those that were merely implied or by operation of law, and that the transfer or assignment of a mortgage to be liable to stamp tax under the terms of Schedule A, act of June 13, 1898, must be made in writing and signed by the assignor.

Please inform the gentlemen above named of the terms of this ruling.

Respectfully, yours,

G. W. WILSON, *Commissioner*.

Mr. F. E. KELLOGG, *Collector Internal Revenue, Kansas City, Mo.*

NEGOTIABLE INSTRUMENTS.

(See CHECKS, DRAFTS, NOTES, ETC.)

PAWNBROKERS.

(20552.)

Special tax—Pawnbroker.

Special tax of pawnbroker not required to be paid for making loans when the chattels are not taken or received by way of pledge, pawn, or exchange.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 17, 1899.

SIR: Your letter of the 12th instant is received relative to the business conducted by George McElwain, Kuhn's Building, Dayton, Ohio.

I note the statements made by you that Revenue Agent Haynes reported to this office Mr. McElwain for special tax as pawnbroker from November 1, 1898, with penalty of \$20; also that, in your opinion, he is not a pawnbroker. You ask for a ruling in this case at an early date.

In reply, you are advised that, from the statements made by Mr. McElwain in his letter addressed to you on the 10th instant, which you inclose, I am of the opinion that he is not subject to special tax as a pawnbroker. The making of loans on chattels would not subject him to said special tax unless he should "take or receive, by way of

pledge, pawn, or exchange, any goods, wares, or merchandise, or any kind of personal property whatever, as security for the repayment of money loaned thereon."

Respectfully, yours, G. W. WILSON, *Acting Commissioner.*

Mr. BERNHARD BETTMANN,

Collector Internal Revenue, Cincinnati, Ohio.

PETROLATUM

(20780.)

Stamp tax—Petrolatum.

Petrolatum is subject to the stamp tax, regardless of the style and manner in which it is put up and sold.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 1, 1899.

SIR: This office is in receipt of a letter under date of February 22, 1899, from the Ring's Ambrosia Company, Wilton, N. H., in which they state that it is their custom to put up and sell petrolatum in glass jars containing from 4 to 16 ounces; that these jars are not labeled in any way, and hence, in the opinion of the company, they can not be held to be taxable under the statute.

They have been referred to you, and you will please advise them that petrolatum is specified under Schedule B as taxable, and it is immaterial how it is labeled, or whether it is labeled at all, so long as it retains its identity.

Petrolatum in bulk, in any quantity, should be stamped at the rate of one-eighth of 1 cent for each 2 ounces or fractional part thereof, as this office is reliably informed that the lowest quantity usually sold at retail is 2 ounces, retailing for 5 cents.

Respectfully, yours, G. W. WILSON, *Commissioner.*
Mr. JAS. A. WOOD, *Collector Internal Revenue, Portsmouth, N. H.*

(20982.)

Stamp tax—Petrolatum.

Defining how the stamp tax shall be computed when petrolatum is sold in bulk, upon whom the obligation to stamp rests, and under what circumstances the unfinished product may be removed from the place of manufacture, or refinery, unstamped.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 5, 1899.

SIR: Recently the several collectors of internal revenue were instructed to cause an investigation to be made with the view of ascer-

taining if the various oil-refining companies within their districts were complying with the regulation relating to the stamping of petrolatum. Many reports of the results of these investigations were received by this office, which have been supplemented by personal visits and letters from representatives of the various refining companies throughout the country.

Upon careful examination of all the evidence submitted, it appears that there are many grades of clarified petrolatum, each having a particular price based upon the cost of production to the refiner and his ability to extract the higher grades of refined petrolatum from the crude stock. The grades of petrolatum are based principally, if not wholly, upon the color of the refined product, which varies from a dark brown to a pure white; and the price to the consumer is in adverse ratio to the amount of coloring matter contained—*i. e.*, the less of coloring matter the more of cost to the consumer.

It further appears that certain refineries make a specialty of certain grades of petrolatum. For example, one refining company confine themselves almost exclusively to the production of the higher grades of petrolatum, such as the white and the product known as "vaseline," such products as are employed exclusively in the manufacture of the high grades of cosmetic and medicinal articles. It is obvious, therefore, that a standard rate of taxation for petrolatum, based upon the retail price to the consumer of a 2-ounce package, is inequitable when applied to petrolatum sold in bulk. The more clearly is this apparent when it is shown that the proportionate cost of 2 ounces of petrolatum is to the cost of its container as 1 to 3; while, compared to the retail price to the consumer, it is as 1 to 15. It still further appears that there intervene between the manufacturer and consumer another class of dealers heretofore unconsidered, known as bottlers. This class buy petrolatum direct from the manufacturer in barrels, and after treating it chemically with heat, and usually by the addition of certain oils, draw it off into small retail packages, stamp it, and otherwise place it in a salable condition. The dealer ordinarily buys the petrolatum that he retails from this class.

Circular 501, revised under "Unclassified petrolatum and other incomplete manufactures shipped in bulk," states:

While the act of June 13, 1898, specifically provides that the stamp taxes shall apply to petrolatum, it is held to be the intent of the statute to impose the tax mainly upon the clarified product. The unclassified is an unfinished product requiring to be treated with heat, and otherwise manipulated, before it will be accepted by manufacturing druggists as a basis for various ointments, or drawn off into small packages and sold as vaseline, and may be shipped in bulk without stamps. If, however, the unclassified, unfinished petrolatum is sold for use by consumers, either at wholesale or retail, it is liable to the stamp tax at the same rate as the finished product.

Many articles which ultimately become taxable are not so when they are first removed from the manufacturing chemist's laboratory,

but are incomplete manufactures, the process of manufacture not being completed until they are bottled, labeled, or otherwise placed in a salable condition.

After a consideration of all the facts, this office is of the opinion that petrolatum, being specified as taxable under Schedule B of the act, is taxable, first, regardless of the style and manner in which it is put up and sold, or how it is held out or advertised; and, secondly, it is taxable, whether intended to be used as a medicine, cosmetic, lubricant, or otherwise, so long as it is known as petrolatum and intended for consumption (by consumption is meant any process whereby the identity of petrolatum is destroyed), and it is so held.

It is, therefore, the duty of the manufacturer, or, more properly speaking, the refiner, to stamp petrolatum in bulk, or otherwise, before removal from his possession for consumption or sale, and the stamp tax must be computed upon the retail price of the article, which is held to be the refiner's price, with reasonable profit to the jobber and retailer added.

But the ruling as to "incomplete manufactures," quoted above, applies equally to petrolatum as it does to every other article or class of articles mentioned in the statute. Applying this ruling, it becomes the privilege of the manufacturer or refiner to remove unstamped such unclarified (granulated) petrolatum in bulk as requires to be treated with heat and otherwise manipulated by the bottler or retail dealer before it is placed in a finished and otherwise salable condition. This, however, must not be construed to relieve the manufacturer or refiner from stamping such unclarified petrolatum in bulk or otherwise, when sold in that condition direct to the consumer, who makes use of it as such, or destroys its identity by converting it into medicinal, cosmetic, lubricating, and other substances.

One, five, ten, twenty-five, and fifty pound tins of petrolatum intended to be consumed by pharmacists, physicians, manufacturers, barbers, etc., in their business, must be stamped before removal from the refinery in proportion to the price charged the consumer.

To recapitulate: The stamp tax shall apply to all clarified petrolatum removed from the place of manufacture or refinery for consumption or sale.

The stamp tax shall be computed upon a fair retail price, which is held to be the manufacturer's or refiner's price, with a reasonable profit to the jobber and retailer added. This is held to include one, five, ten, twenty-five, and fifty pound tins of petrolatum, not ordinarily rebottled, but used by druggists, physicians, and others in their professions and trades.

Unclarified (granulated) petrolatum sold to dealers or bottlers, to be treated with heat, bottled, labeled, and otherwise placed in a salable condition, does not require to be stamped when it is removed from the refinery in an unclarified state, it being incumbent upon the bot-

tlar or dealer to affix the requisite amount of adhesive stamps when it is placed in a finished and salable condition.

The amount of stamps to be affixed to such petrolatum as has been clarified, bottled, or otherwise placed in a salable condition by the bottler or retailer must be computed upon the retail price at which such package is sold by the retailer to the consumer.

Unclassified petrolatum sold in bulk to the consumer who makes use of it as such, or who destroys its identity by converting it into medicinal, cosmetic, lubricating, or other substances requires to be stamped by the manufacturer or refiner when sold to such consumers.

You will advise the various oil-refining companies in your district in accordance with this ruling. (See following decision 21073.)

Respectfully, yours,

G. W. WILSON, *Commissioner*.

Mr. JAMES S. FRUIT,

Collector Twenty-third District, Pittsburg, Pa.

(21073.)

Stamp tax—Petrolatum.

Prescribing a caution notice to be affixed to bulk packages of petrolatum, under which the same may be removed, in certain cases, unstamped, and ruling that the exemptions in section 20, act of June 13, 1898, have no application to it.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 26, 1899.

SIR: Your letter under date of April 19, 1899, was received. You acknowledge the receipt of a letter from this office under date of April 17, 1899, in which you were informed that a jobber in Chicago, upon request for information, was advised that it is the duty of the refiner to stamp such bulk packages of petrolatum as are intended to be sold in the unclassified state through the medium of the jobber direct to the consumer, and you were requested to advise this office if this was your understanding.

In reply, you quote from decision 20982 (p. 215), as follows:

Unclassified (granulated) petrolatum sold to dealers or bottlers, to be treated with heat, bottled, labeled, and otherwise placed in a salable condition, does not require to be stamped when it is removed from the refinery in the unclassified state, it being incumbent upon the bottler or dealer to affix the requisite amount of adhesive stamps when it is placed in a finished and salable condition.

You state that, in accordance with your interpretation of this paragraph, the refiner is privileged to ship unstamped unclassified (granulated) petrolatum in bulk—i. e., quantities in excess of 100 pounds—to wholesale dealers. You state, further, that when the refiner ships

a car load of petrolatum (60 barrels) to a wholesale dealer or jobber the latter will dispose of the car load as follows: Probably 25 barrels will be repacked and properly stamped, 20 barrels he will export, and the remaining 15 barrels he will sell direct to the consumer. You submit that it is impracticable for the refiner to undertake to stamp such petrolatum as is sold by the wholesale dealer direct to the consumer in bulk. The refiner knows that a certain portion of the car load will be sold by the wholesale dealer to the consumer in the condition that it is shipped from the refinery, but he is unable to say exactly what portion.

You suggest that the refiner be authorized to ship bulk packages of unclarified petrolatum to the wholesale dealer unstamped, provided the following printed caution is affixed to the bulk package:

These goods are sold as bulk goods to be repacked, and must not be consumed. When repacked or sold to a consumer, they must then be stamped as per ruling April 5, 1899.

Your suggestion is believed to be a good one, with the exception, however, of the wording of the caution. The fact that bulk goods are shipped to be repacked can not be advanced as a sufficient reason under the statute for the prohibition of their consumption. These goods are privileged to be removed from the refinery unstamped simply on the ground that they are an unfinished product so far as the obligation to stamp them applies. The following printed caution affixed to the bulk package of unclarified petrolatum will operate to relieve it from the liability to the stamp tax until it has been repacked or otherwise placed in a salable condition:

These goods are removed from the refinery *unstamped* as an unfinished product, to be repacked, stamped, and otherwise placed in a salable condition. If sold to a consumer in this condition, it must be stamped in proportion to the price at which it is sold at the rate of 2½ cents for each one dollar's worth of value.

You suggest also that the refiner be required to stamp nothing in excess of a 10-pound package, making it incumbent upon the refiner, wholesale or retail dealer to see that all petrolatum is stamped whenever they sell it direct to the consumer, no matter in what size or shape sold. You state, there is no question that there is a great deal of bulk petrolatum sold by the retailer which should not be stamped. For example, when he buys a 25 or 50 pound package, the larger part would be used in compounding physicians' prescriptions, when, under the statute, it is exempt from taxation.

Your suggestion is based upon an erroneous conclusion. The exemption provided, under section 20 of the act, for "any medicine sold to or for the use of any person which may be mixed or compounded for such person according to the written recipe or prescription of any practicing physician," applies to medicines only. Petrolatum is not a medicinal article, as contemplated by the act of June 13, 1898, and it, like other substances, can be rendered medicinal only by holding it

out as a remedy for some ailment affecting the human or animal body. Petrolatum was placed by the framers of the act in the category with "perfumery and cosmetics and other similar articles," and, like other articles of its class, is specified therein as taxable, and the exemptions provided in section 20 have no application to it; therefore, in order that the stamp tax shall be properly charged to such quantities of petrolatum as are sold direct to the dispensing druggist or other consumer, it becomes the duty of the refiner to stamp such packages before removal from the place of manufacture or refinery. This office was advised by your representative that refiners usually do sell from 10 to 50 pound packages, and occasionally larger, direct to the dispensing druggists and other consumers, and that such packages the Beaver Refining Company invariably stamp.

This office at any time will cheerfully explain its position on this or any question involving the revenue, and will take under careful consideration any suggestions that may from time to time be offered that have for their object the attainment of a more simple or equitable method for the collection of the revenues.

Respectfully, yours,

G. W. WILSON, *Commissioner*.

Mr. C. A. WALES,

President, Beaver Refining Company, Washington, Pa.

PIPE-LINE COMPANIES.

(21341.)

Special tax—Gross receipts.

Tax imposed by section 27, act of June 13, 1898, held to apply to gross receipts of persons, firms, or companies owning or controlling any pipe line for transporting natural gas.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 1, 1899.

SIR: I am in receipt of your letter of the 23d instant, stating that the Columbus Gas Company has submitted the question whether natural or artificial gas companies are subject to tax under the war-revenue act; and if so, whether in case of artificial gas the returns made by the company should include sales of tar, ammonia, coke, etc.

The tax imposed by section 27 of the act named is required by that section to be paid by "every person, firm, corporation, or company carrying on or doing the business of refining petroleum or refining sugar, or owning or controlling any pipe line for the transportation of oil or other products, where gross annual receipts exceed two hundred and fifty thousand dollars." * * *

It is very evident from the language used in this section that Congress intended that the tax so imposed should apply to products other

than oil when transported by means of a pipe line; and inasmuch as natural gas is as much a product as natural oil (both of which being often obtained from the same source), this office is clearly of the opinion that the receipts derived from the transportation of gas by such means are taxable under the section named.

The term "pipe line," however, as understood by this office, applies only to the comparatively recent system of transportation by which oil, or other products, are conveyed from place to place through pipes, instead of in tanks, barrels, etc., transported by rail or other conveyance, and is not intended to apply to gas mains and pipes through which gas is conveyed and *distributed directly to the consumer*. As construed, therefore, this section of the act does not extend to persons, firms, and companies owning or controlling gas plants and supplying gas directly to consumers as last above indicated. So far as this office is informed, artificial gas companies use their mains and connecting pipes for no other purpose; and no question, therefore, arises under the act, in such cases, as to the receipts from sales of by-products referred to in your letter.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. JOHN C. ENTREKIN,
Collector Eleventh District, Chillicothe, Ohio.

(21494.)

Special tax—Gross receipts.

Persons, firms, and companies owning or controlling pipe lines connected with mains or pipes for distributing natural or artificial gas not exempt from tax imposed by section 27, act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 10, 1899.

SIR: I am in receipt of your letter of the 7th instant, transmitting a letter from the Philadelphia Company, of your city, in reply to your demand on that company for returns of its gross receipts taxable under section 27 of the war-revenue act. You state that this company transports natural gas direct from the wells to the consumers, and has no plant, and the company, in its letter, claims exemption from tax on this ground, and in support of its claim refers to Treasury decision 21341 (page 220).

As stated in that decision, the term "pipe line," as used in section 27, does not, in the opinion of this office, extend to "gas mains and pipes through which gas is conveyed and *distributed directly to the consumer*." This portion of the decision, while having special reference to artificial gas, would, of course, under the same conditions,

also apply to natural gas. But, ordinarily, natural gas is first transported from the wells by pipe line to some central or convenient point, and then introduced into distributing mains or pipes, and at a much lower pressure. In such cases, two systems are used—one for transporting and the other for distributing the gas. The fact that the two systems are connected one with the other, and are owned or controlled by the same company, would not exempt the company from tax liability under section 27.

In all cases, therefore, where natural or artificial gas is transported by pipe line, either independently or in connection with distributing mains or pipes, monthly returns of the gross amount of all receipts should be made by the person, firm, or company owning or controlling such pipe line.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. JAMES S. FRUIT, *Collector Twenty-third District, Pittsburg, Pa.*

POST STAMPING OF INSTRUMENTS AND DOCUMENTS.

(20696.)

Stamping unstamped instruments.

When deputy collectors can remit penalties and stamp instruments left unstamped from inadvertence or mistake.—Instruments to be validated may be sent to collector by mail, with affidavit, instead of being personally brought to the collector's office.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 10, 1899.

SIR: Your letter of the 25th ultimo in regard to stamping unstamped instruments, where the omission was accidental or where the party failed to affix the stamp through ignorance, has been received.

It has been held that a deputy collector, by virtue of his ordinary duties as such, has no power to remit penalties and to stamp or authorize the stamping of instruments when they have been left unstamped from inadvertence or mistake, except when, from the inability or sickness of the collector, he acts by special authority in his place. The best evidence that this special authority has been devolved upon the deputy is the collector's official seal affixed to the certificate which remits the penalty and shows the ground upon which the stamp has been subsequently affixed. Unless the act of the deputy is authenticated with the official seal of the collector, or it is shown by sufficient evidence *abunde* that the collector was sick or otherwise unable to act at the time, and that the deputy was authorized for the time being to exercise the power in question, the same should be disregarded and treated as a nullity. (*Brown v. Crandall*, 23 Iowa, 112.)

It is not necessary that the parties who live 200 miles from your office should go in person. The law in regard to remitting the penalty says:

Where it shall appear to said collector, upon oath or otherwise, to his satisfaction, that any such instrument has not been duly stamped, at the time of making or issuing the same, by reason of accident, mistake, inadvertence, or urgent necessity, and without any willful design to defraud the United States of the stamp, or to evade or delay the payment thereof, then, and in such case, if such instrument, or if the original be lost, a copy thereof, duly certified by the officer having charge of any records in which such original is required to be recorded, or otherwise duly proven to the satisfaction of the collector, shall, within twelve calendar months after the making or issuing thereof, be brought to the said collector of internal revenue to be stamped, etc.

This should receive a liberal rather than a strict construction, the better to effectuate justice and carry out the reason and policy of the law. Accordingly, it has been held that the party can make an affidavit and forward it to the collector with the tax due and the instrument which it is desired to have validated.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. JOHN M. KEMBLE,

Collector Fourth District, Burlington, Iowa.

(21153.)

Stamp tax—Affixing and canceling of stamps by recorders of deeds.

Circumstances under which a recorder or register of deeds can legally affix and cancel stamps.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 15, 1899.

SIR: This office is in receipt of your letter of May 1, 1899, in which you state that you have deeds of conveyance and other taxable instruments sent you from distant parts of the country for record. These instruments are executed before justices of the peace and other officers away from business centers, and in a number of instances the parties to an instrument, as well as the officer before whom the acknowledgment is taken, are ignorant of the law regulating the question of taxation on the instruments. These instruments are sent to you for record, accompanied with the request that you affix and cancel the required amount of documentary stamps, and this request is made without intent to evade the law or defraud the Government, the reverse of this being the case, and you ask if it is permissible for you to comply with these requests.

In reply, you are informed that this office has given this subject a great deal of consideration, with the desire that some way might be found whereby such requests might be complied with without contravening the requirements of the law. The request that you make must, however, be denied for this reason: In the majority of cases wherein instruments are sent to you with the request that you affix and cancel the appropriate stamps, there has been a complete delivery of the instrument before it reaches your hands for record. The unqualified requirement of the law is that every instrument subject to taxation shall have affixed and canceled the proper stamp before the instrument is issued or delivered, and if the instrument has been delivered without being stamped before reaching your hands, this office could not assume legislative functions and alter the law to permit you to stamp the instrument when the requirements of law are otherwise. This office, however, places this construction upon the law in regard to the stamping of instruments: The parties to an instrument can, by a proper power of attorney or an equivalent written instrument, authorize a person to affix and cancel the stamps that are necessary to be affixed to the instrument, if this occurs before the party who makes or signs the instrument delivers it to the party to whom it is to be issued. Beyond this, this office can not go.

Up to this point there is not in law a delivery. In other words, the grantor in a deed of conveyance can authorize a person to affix and cancel the stamps necessary before actual or constructive delivery to the grantee, and if a grantor in a deed, a mortgagor in a mortgage, or a person holding a similar position in any instrument authorizes you by proper authority to affix and cancel the necessary documentary stamp to an instrument, before you actually deliver the instrument to the grantee, this office is of the opinion that under these circumstances the law will have been sufficiently complied with if the ruling herein is strictly followed, because up to the point of your affixing and canceling the stamps there has not been a delivery in law by the grantor.

This ruling has been made with a due regard to the requirements of the law and the rights of parties to the instruments that are subject to taxation, and with a desire to assist parties who are ignorant of the requirements of the law in regard to the taxation of documents.

Respectfully, yours, G. W. WILSON, *Commissioner*.

Mr. CHARLES F. COBURN,

Register of Deeds, Farmington, Me.

(21226.)

Stamp tax—Notation on record by recorders of deeds.

Recorders of deeds should note upon their records the absence or presence of stamps on documents presented for record.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 2, 1899.

SIR: This office is in receipt of your letter of May 23, 1899, in which you ask if there is any law which imposes a duty on the register of deeds to make a notation on the county records of the fact that a document presented for record has been sufficiently stamped or not. You state that in your office the compensation of the copyist is according to the number of words written, and that if the words "Internal-revenue stamps, one dollar, attached and canceled," are written by the copyist the register must pay for the same, but for which you, as register, receive no compensation, for your rates of charges are regulated by State laws. You ask: Does not the fact of the register accepting a document imply that there are enough canceled stamps attached?

In reply, you are informed that the act of June 13, 1898, has no provision in it compelling registers of deeds to make a notation on their records of the facts that a document has or has not the proper internal-revenue stamps attached. The fact should appear upon the record whether or not the document is stamped. If the records do not show this fact, they lack a very essential part of their object, viz, that records should be an exact copy of the instrument; if they are not, they are of no service to the public, whose right it is to know just what the instrument is that was recorded. The record should show nothing more nor nothing less, if its object is to be fully carried out.

It would appear that a record of a paper since the passage of the war-revenue act without a statement in regard to the absence or presence of revenue stamps would be unsatisfactory to the public and a just cause of complaint against the register of deeds. In such case no one would be able to judge of the validity of any instrument from the record and no abstract of title could be accurately compiled therefrom, and no certificate of title could be safely given as based thereon.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. H. F. ROGERS, *Register of Deeds, Chattanooga, Tenn.*

13442—15

(21368.)

Post stamping of instruments.

Collectors can not remit penalty where the instrument was presented more than twelve months after the instrument was issued.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 10, 1899.

SIR: This office is in receipt of your letter of the 3d instant, calling attention to section 13 of the war-revenue act in regard to post stamping, by collectors, of instruments which were not stamped at the date of issue, where the omission to stamp was accidental, or caused by inadvertence, mistake, or urgent necessity, and without willful design to defraud the United States.

The authority given to the collector to remit the penalty and cause the instrument to be duly stamped must be exercised within twelve calendar months after the making and issuing of the instrument. When the instrument is presented at the expiration of twelve months after it was issued, in order to entitle it to be stamped, it is necessary to require the payment of the penalty provided.

Respectfully, yours,

ROBT. WILLIAMS, JR.,
Acting Commissioner.

Mr. A. J. DAUGHERTY, *Collector Fifth District, Peoria, Ill.*

(21420.)

Stamp tax—Post stamping of documents.

Provisions of the law relating to the stamping of documents by collectors of internal revenue, when said documents have not been stamped at the time of making or issuing the same, by reason of accident, mistake, inadvertence, or urgent necessity, and without any willful design to defraud the United States of the stamp or to evade or delay the payment thereof.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 24, 1899.

SIR: I am in receipt of your letter of July 15, 1899, in which you state that a deed of conveyance was signed, executed, and delivered July 12, 1898, but was not stamped, owing to a mistake of the parties. The instrument was presented to you on July 15, 1899, for stamping, under section 13 of the war-revenue act, and you ask to be instructed what course to pursue in this matter.

In reply, you are advised that the first proviso in section 13 specifically mentions "bonds, debentures, or certificates of stock or of indebtedness," and further provides for their stamping by the collector of internal revenue when stamps have been omitted.

Section 3422 of the Revised Statutes of the United States provides for the stamping in all cases where the party has not affixed to an instrument the stamp required by law thereupon at the time of making or issuing the said instrument. The provisions in this section in regard to the payment of penalty and the tax required are as follows:

First, for the payment of the tax required, and, second, a penalty of double the amount of tax remaining unpaid, but in no case to be less than five dollars, and where the whole amount of the tax denoted by the stamp required shall exceed the sum of fifty dollars, then interest shall be paid at the rate of six per cent on said tax from the day on which such stamp ought to have been affixed.

This office holds that section 3422 of the Revised Statutes of the United States should be considered in connection with section 13 of the act of June 13, 1898, in cases of post stamping instruments subject to taxation other than "bonds, debentures, or certificates of stock, or of indebtedness."

This office further holds that all the provisions of section 3422 that are inconsistent with the requirements of section 13 are repealed by the act of June 13, 1898. Therefore, section 13 of the act, under these circumstances, is the controlling section in regard to the stamping of all instruments and the provisions as to the time of stamping, the tax required, and the penalties prescribed therein should control in all cases, the penalties provided for by section 3422 being repealed as aforesaid.

The second proviso in section 13 requires the person making the application for stamping the instrument not stamped to appear before the collector of internal revenue within twelve months after making or issuing the instrument in order to have the collector remit the penalties prescribed by the first proviso.

Therefore, as the party interested in the deed of conveyance first hereinbefore described did not appear before you within twelve calendar months after the making or issuing of the instrument, you can not remit the penalties provided for under the first proviso in section 13. In this case the first proviso contains the requirements of the law in this particular. The persons interested are required to pay to you "the price of the proper stamp required by law." They are then required to pay a penalty of \$10, and if "the whole amount of the tax denoted by the stamp required shall exceed the sum of \$50, they are required to pay to you interest at the rate of 6 per cent on said tax from the day on which such stamp ought to have been affixed."

When these conditions have been complied with you should affix the proper stamp to such deed of conveyance and note upon the margin thereof the date of your so doing and the fact that such penalty has been paid. Said deed of conveyance shall thereupon be deemed

and held to be as valid, to all intents and purposes, as if stamped when made or issued. * * *

Respectfully, yours,

ROBERT WILLIAMS, Jr.,
Acting Commissioner.

Mr. JOHN C. LYNCH,
Collector First District, San Francisco, Cal.

POWERS OF ATTORNEY.

(See also DECISION 21815, p. 86.)

(21467.)

Stamp tax—Powers of attorney used in the transfer of stock.

An instrument authorizing the secretary to transfer stock on the books of the company held not to be taxable as a power of attorney.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 2, 1899.

SIR: This office is in receipt of a letter from S. C. Cooper, treasurer of the City and Suburban Railway of Washington, whose office appears to be at 833 Equitable Building, Baltimore, Md. Mr. Cooper asks if the following instrument, which is used in the assignment of stock of the corporation of which he is treasurer, requires to be stamped as a power of attorney:

For value received, I hereby assign and set over unto ——— the attached certificate of stock, and hereby authorize the secretary of the City and Suburban Railway of Washington to transfer the same on the books of the company.

Dated the ——— day of ———, 1899.

———. [SEAL.]

Witness: ———.

In reply, you are advised that in the opinion of this office the above instrument is not a power of attorney within the meaning of the internal-revenue law. A power of attorney is an instrument authorizing a person to act as agent or attorney of the person granting it.

In this case the secretary of the corporation can not be said to be the agent or attorney for the transferer of the stock, as the effect of the instrument is only to give the secretary authority to do an act which he is required to do by the by-laws of the corporation, when properly authorized, just as the cashier of a bank is required to pay a check when the check is properly signed and presented for payment. Therefore, this instrument would only be taxable as a transfer of stock at the rate of 2 cents for each \$100 or fraction thereof of the par value of said stock.

Please advise Mr. Cooper in accordance with the above ruling.

Respectfully, yours,

G. W. WILSON, *Commissioner.*

Mr. B. F. PARLETT, *Collector Internal Revenue, Baltimore, Md.*

(21563.)

Stamp tax—Powers of attorney used in the transfer of stock.

An instrument appointing an attorney in fact to transfer stock on the books of the company requires to be stamped as a power of attorney, but an instrument authorizing the secretary to make the transfer is held not to be a power of attorney.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 1, 1899.

SIR: This office is in receipt of a letter under date of August 29, 1899, from Thomas P. Swin, secretary and treasurer of the Brooklyn City Railroad Company, Brooklyn, N. Y.

Mr. Swin states that he has recently noticed in the press an alleged ruling of this office to the effect that no charge should be made as to power of attorney for transfers made on forms printed on stock certificates, and asks whether such a ruling has been made, and, if so, whether the following form requires a 25-cent stamp as a power of attorney:

For value received ——— hereby sell, assign, and transfer unto ——— shares of the capital stock represented by the within certificate, and do hereby irrevocably constitute and appoint ——— attorney to transfer the said stock on the books of the within-named company, with full power of substitution in the premises.

Dated ———, 18 —.

You will please advise Mr. Swin that the above form appearing on the back of a stock certificate would be taxable as a transfer of stock at the rate of 2 cents for each \$100 or fraction thereof of the par value of said stock, and in addition a 25-cent stamp is required because of the power of attorney embodied therein.

Under date of August 2, 1899 (see Treasury decision 21467, page 228), this office ruled that the following form was not a power of attorney within the meaning of the internal-revenue law, and would only be taxable as a transfer of stock at the rate of 2 cents for each \$100 or fraction thereof of the par value of the stock:

For value received, I hereby assign and set over unto ——— the attached certificate of stock, and hereby authorize the secretary of the City and Suburban Railway of Washington to transfer the same on the books of the company.

Dated ——— day of ———, 1899.

———. [SEAL.]

Witness: ———.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. FRANK R. MOORE, *Collector First District, Brooklyn, N. Y.*

PROMISSORY NOTES.

(See CHECKS, DRAFTS, NOTES, ETC.)

PROPRIETARY ARTICLES.

(See also MEDICINAL PREPARATIONS.)

(20634.)

Stamping of proprietary articles.

Decision of the United States district court, southern district of New York, relative to stamping of "uncompounded medicinal drugs or chemicals."—Aristol, phenacetin, euophen, piperazine, protargol, losophen, lycetol, sulfonal, tannigen, tannopine, trional, and salophen exempt from stamp tax by proviso in section 20, act of June 13, 1898, as uncompounded drugs.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 24, 1899.

The appended decision of the United States district court, southern district of New York, is hereby promulgated for the information of all officers of the Internal-Revenue Service.

G. W. WILSON, *Acting Commissioner.*

[United States v. Aristol, Euophen, etc., Albert Stubbs, claimant.]

BROWN, district judge:

The above libel was filed to enforce an alleged forfeiture of a quantity of aristol, phenacetin, and ten other articles under sections 20 and 22 of the act of June 13, 1898, chapter 448, for being offered for sale without being stamped as proprietary articles. The only question raised was whether the articles are by that act subject to a stamp tax. A jury trial being waived, the cause has been heard by the court without a jury.

It was admitted that all the articles in question are covered by patents and a trade-mark, and that all are proprietary medicinal articles. As such, according to Schedule B (p. 462), all would be subject to a stamp tax without doubt, except for the proviso of section 20. The latter section provides—

"That no stamp tax shall be imposed upon any *uncompounded medicinal drug or chemical*, nor upon any medicine sold to or for the use of any person which may be mixed or compounded for said person according to the written recipe or prescription of any practicing physician or surgeon, or which may be put up or compounded for said person by a druggist or pharmacist selling at retail only. The stamp taxes provided for in Schedule B of this Act shall apply to all medicinal articles *compounded by any formula*, published or unpublished, which are put up in style or manner similar to that of patent, trade-

mark, or proprietary medicine in general, or which are advertised on the package or otherwise as remedies or specifics for any ailment, or as having any special claim to merit, or to any peculiar advantage in mode of preparation, quality, use or effect."

This specific proviso establishes an exception to the general language of Schedule B, and excludes from liability to tax all such articles as come within the proviso, even though they may be proprietary medicinal articles or covered by a patent or trade-mark, for the latter part of the clause above quoted shows clearly that in framing this proviso Schedule B was present in the mind of the framers of the law, since it distinctly declares that "all medicinal articles compounded by any formula, which," etc., shall be subject to the "stamp taxes provided for in Schedule B." Thus among proprietary or patented medicinal articles and articles that are put up in a similar manner the distinction is clearly pointed out between those which are *compounded* medicinal drugs and those which are not, the former being taxable and the latter exempt. And the terms "compounded" and "uncompounded medicinal drugs or chemicals" must be interpreted according to the common use of those terms in the business and among the persons referred to in the act, as shown by the context in the provisions in which they occur.

The evidence produced before me accordingly relates (1) to the meaning of the phrase "uncompounded medicinal drug or chemical," and (2) to the phrase "all medicinal articles compounded by any formula." There was but little evidence, however, bearing on the latter point.

The testimony leaves no doubt that all of the twelve articles seized are highly complex chemical substances, more or less largely used as medicines, and valued as such. The chemical constituents of all of these articles are known and their properties. The arrangement of the molecules is also known in all except in protargol. Though complex in chemical composition, each article is proved to be strictly a single chemical substance, entity, or unit. In each the constituent elements are united by chemical affinity, and by a peculiar arrangement of the molecules, which gives to each of these articles properties and peculiarities distinguishing it not only from its own elementary constituents, but from every other known substance.

Though each of these articles is a single definite chemical substance, however, inasmuch as each is a chemical compound, consisting of several different elements chemically combined, and is a medicinal drug or chemical, it is contended by the Government that it is not "uncompounded" within the proviso of section 20, above quoted, but that it is a drug compounded of the different chemical elements that enter into its combination, and therefore not an "uncompounded drug." The claimant contends that this construction of the phrase "uncompounded medicinal drug" is erroneous, resulting from a confusion of the terms "compound, compounded, and uncompounded," which it is claimed are altogether distinguishable and different. The evidence is very clear and convincing that while the term "compound" is in common use in chemistry, as in such phrases as "a chemical compound," or "a compound formed," etc., the words "compounded" and "uncompounded" are wholly unknown to chemical science, and are neither found in chemical text-books nor used in the chemical laboratory.

The term "compound" signifies in chemistry a substance formed by a chemical union of its constituent elements, and never a simple

mixture in which a chemical union of the ingredients does not occur. In pharmacy, on the other hand, a "compound" is merely a mixture of different ingredients, without reference to chemical union; and the word "compounded" is employed in ordinary and common use in pharmacy to indicate something formed by a mixture of ingredients without chemical union. A compounded drug is a drug made up of other articles, drugs, or chemicals mixed together, by trituration, by rubbing together, or by dissolving, etc. Such an article is not a single definite chemical substance, but "compounded" by the mere mixture of two or more chemical substances, each of which retains its own separate properties, which is not true of a chemical compound. The verb to "compound" means to mix or prepare. To "compound" a prescription is to prepare it for use, or put together the different articles specified in the prescription so as to be fit for the patient, and this is the ordinary and common use of the word with druggists. An "uncompounded medicinal drug," in pharmacy, is a drug not made up of two or more constituent drugs or chemicals, but a single drug as prepared without admixture for the pharmacist's use and with no reference to its elementary chemical constitution, whether simple or compound. Iron, sulphur, iodine, are examples of simple chemical elements that are drugs when suitably prepared for medicinal use. Quinine, opium, etc., are common examples of single "uncompounded medicinal drugs," though "compounds" chemically considered.

The witnesses called by the Government do not in substance differ from the explanation of terms as given by the defendant's witnesses to the effect above stated. None of them testify that either of the articles seized is a "compounded medicinal drug or chemical," or "compounded by any formula," while many of the claimant's witnesses testify that each of these articles is a single chemical substance, and an "uncompounded medicinal drug."

In order to uphold the Government's claim that the articles in question are taxable, I should be obliged to disregard the great weight of evidence in the case, and to hold that the phrase "uncompounded medicinal drug" is used in the statute in a sense not only unknown to science, but also unknown to those whose business it is, as pharmacists or apothecaries, to deal in drugs and chemicals, and in respect to whom especially it must be considered that this proviso was framed. It would certainly be unreasonable to put any such construction upon the phrases of this act. The term "uncompounded" is used once and the term "compounded" three times in the proviso above quoted. The term "compounded" is twice used obviously in reference to pharmacists, druggists, or apothecaries in putting up drugs, which is their peculiar business. The proviso declares that no tax shall be imposed upon any medicine * * * "mixed or compounded for such a person according to the written recipe or prescription of any practicing physician, or which may be put up or compounded for such person by a druggist or pharmacist selling at retail only." These obviously have reference to the pharmacist alone. The language used by the act is his language, and it must be interpreted as it is ordinarily understood in his art. The word "compounded," as used a little later in the same proviso in reference to medicinal articles *compounded* by any *formula*, is to be interpreted, as the context shows, in the same sense—that is, mixed, put together, or prepared, according to any formula published or unpublished.

The evidence is clear that none of the articles in question are prepared in that way. The preparation of phenacetin, a type of all, by the mixing of chemical substances in order to produce chemical reac-

tions resulting in a new and distinct chemical substance or entity is a wholly different operation from that described or intended by the act as "compounded by any formula." The latter is a mere mechanical operation, resulting only in a mechanical mixture; the former is a refined chemical elaboration, resulting in a new chemical substance, an uncompounded medical drug.

The evidence shows that the articles in question are wholly different in kind from what are commonly termed patent medicines, or the articles usually put on the market and advertised to the public as such, or advertised as specifics for diseases. These articles are prepared for the use of physicians upon prescriptions to be put up by the druggist; they are advertised for these purposes only, and this distinction separates them from the class of articles which seems to have been particularly in mind in the provisions of Schedule B, which are mostly, if not exclusively, mere compounded mixtures. Proprietary medicinal drugs or chemicals consisting of pharmaceutical extracts, tinctures, alkaloids, etc., are doubtless taxable, because they are not "uncompounded drugs," but compounded mixtures, retaining the qualities of their component parts instead of exhibiting the new properties of a distinct drug or chemical substance. I do not perceive the practical difficulties urged as to the application of this distinction, and, if even some such difficulties existed, it would not be a sufficient reason for not applying the distinction made by the proviso of the 20th section wherever, as in this case, it is clear.

I am of opinion, therefore, that the articles in question are not taxable, but are exempted by the proviso of section 20 above quoted, and that no forfeiture of the articles in question was incurred by the failure to affix revenue stamps.

NOVEMBER 22, 1898.

RAILROADS.

(See also DECISIONS 21521, p. 63; 21559, p. 133.)

(21342.)

Stamp tax—Seats and berths in parlor and sleeping cars.

Method adopted in stamping tickets sold for seats in parlor cars and berths in sleeping cars.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 5, 1899.

SIR: Referring to your report on the stamping of sleeping-car and parlor-car tickets under the internal-revenue act of June 13, 1898, I have to state for your information that soon after the passage of the act it was represented to this office, on behalf of the several sleeping-car companies, that the berth or seat check is issued in every case where a berth or seat is sold, whereas in many cases no ticket such as is bought at the regular office of the company, and which is always exchanged for the berth or seat check, is ever issued to the passengers.

It is known that in a large number of instances passengers board a

train at way stations or get in a sleeping or palace car at terminal points without ever obtaining the ticket sold and issued at the ticket office. They pay the conductor and receive their berth or seat check, as the case may be, and never see any other ticket, so it was decided that the berth or seat check might properly be held to be the ticket on which the stamp required by law should be affixed, it being the only instrument that is always issued when seats and berths are sold in parlor and sleeping cars.

The method at present in vogue by the Pullman Car Company, where a stamp is imprinted on the berth or seat ticket, so that a portion of it appears both on the original given to the passenger and on the duplicate retained by the conductor, is believed by this office to be the most convenient and satisfactory way of collecting the tax, and this system will be urged for adoption upon the other sleeping-car companies who now generally apply the adhesive stamp to the berth or seat ticket which is retained by the conductor.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. H. L. REMMEL,
Collector Internal Revenue, Little Rock, Ark.

RECEIPTS.

(See also DECISIONS 6, p. 29; 20685, p. 80; 21020, p. 81; 21692, p. 28.)

(13.)

Stamp tax—Express baggage receipts.

No tax on receipts issued for special-delivery baggage.—Treasury decision 21668 revoked.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 9, 1900.

SIR: This office is in receipt of your letter of December 27, 1899, containing further information as to the method pursued in the transportation of special-delivery baggage by the Union Transfer Company of Philadelphia.

You submit form of check or ticket issued by said company for a piece of special-delivery baggage to be taken from the Windsor Hotel, Philadelphia, Pa., and delivered at the Fifth Avenue Hotel, New York City, and you ask to be informed whether such checks or tickets require a 1-cent stamp in accordance with Treasury decision 21668.

You are advised that this office has carefully reconsidered the question of the taxability of receipts issued by transfer companies for special-delivery baggage, and has decided that same are not subject to taxation. Treasury decision 21668 is hereby revoked.

Respectfully, yours,

G. W. WILSON, *Commissioner.*

Mr. E. A. ALEXANDER, *Revenue Agent, Philadelphia, Pa.*

SALES AT EXCHANGES, BOARDS OF TRADE, ETC.

(See EXCHANGES, BOARDS OF TRADE, ETC., SALES AT.)

SHOWS AND EXHIBITIONS.

(See EXHIBITIONS AND SHOWS.)

SNUFF.

(See TOBACCO, CIGARS, AND SNUFF.)

STAMPS.

(See INTERNAL-REVENUE STAMPS.)

STOCKS.

(See also DECISIONS 21152, p. 12; 21379, p. 61; 21467, p. 228; 21563, p. 229; 21707, p. 66.)

(20694.)

Stamp tax—Preferred stock issued in lieu of common stock.

Preferred stock issued in lieu of common stock not taxable when there is no change of ownership.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 7, 1899.

SIR: This office is in receipt of your letter of January 20, 1899, submitting a communication from Charles H. Poland, treasurer of the Wheelwright Filler and Manufacturing Company, 72 Weybosset street, Providence, R. I., and you ask to be advised on the questions therein contained.

Mr. Poland submits the following questions:

(1) When common stock in a corporation is surrendered to the corporation and preferred stock is issued in place of the common stock thus surrendered, no other equivalent being passed therefor, are stamps required on either or both?

Answer. Neither the certificates representing the common stock nor the certificates representing the preferred stock issued in lieu of the common stock would be liable to taxation, providing there is no change of ownership.

(2) If the common stock surrendered to the corporation exceeds the amount of the preferred stock issued to the same person, what stamps are required?

Answer. None.

(3) When certificates of stock are transferred to a corporation and certificates of smaller denominations are issued to the same parties in place of same, or to the same person with the word "trustee" added, are stamps required?

Answer. When certificates of stock are transferred to a corporation, for which certificates of smaller denominations are issued to the same parties, neither the certificates of stock surrendered nor the new certificates of smaller denominations issued in lieu thereof require to be stamped. If, however, the word "trustee" should be added in the new certificates which are issued, then the tax is imposed at the rate of 2 cents per \$100 or fraction thereof of the face value of the certificates surrendered, and the stamps representing this fact should be affixed to the certificates surrendered.

(4) If common stock is surrendered and preferred stock for the part of the whole of it is issued to another person than the one named in the original certificate, but no equivalent is given for the same, are stamps required?

Answer. The certificates representing the common stock, for which preferred stock is to be issued in the name of a person, other than the one named in the certificates surrendered, must have stamps affixed thereto at the rate of 2 cents per \$100 or fraction thereof of the face value.

(5) Are the stamps required on a transfer of stock to be paid for by the grantor or grantee?

Answer. The law does not state who shall pay for the stamps required on transfers of certificates of stock. It is a question which must be settled between the parties to the transaction.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. THOMAS A. LAKE,

Collector Internal Revenue, Hartford, Conn.

(20727.)

Stamp tax—Transfers of stock by brokers.

Where brokers acting in behalf of their principals buy stock and receive stamped bills of sale in their own names, they may transfer such stock on the books of the corporation to the names of their principals without additional stamp tax.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., February 21, 1899.

SIR: This office is in receipt of your letters, under date of February 1 and 3, 1899, respectively, in reference to a letter written you by this

office in reply to an inquiry from the Iowa Central Railway Company regarding stock transactions. You submit letters from several bankers and brokers in your city in reference to this matter, and state that you trust this office will consider the question.

You are advised that this office has carefully considered the question of sales of stock between brokers and their principals, and now holds that where brokers are acting in good faith for their principals, only one tax is required on the sale or transfer of stock between the brokers and their principals, and, therefore, when A, owning stock standing in his own name, indorses it in blank and hands it to his broker, B, to sell, broker B thereupon selling this stock to another broker, C, who is buying in behalf of his principal, D, and giving said broker C a properly stamped bill of sale, and said broker C thereupon requests the company to reissue said stock to the actual purchaser, D, no additional stamp is required on the transaction.

Respectfully, yours,

N. B. SCOTT, *Commissioner*.

Mr. CHAS. H. TREAT, *Collector Second District, New York, N. Y.*

(20793)

Stamp tax—Certificates of stock of foreign corporations.

Certificates of stock of a foreign corporation when sold or delivered within the United States are liable to the same tax as certificates of stock of any domestic corporation.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., March 6, 1899.

SIR: This office is in receipt of a letter under date of February 25, 1899, from L. C. Holden, secretary of the Rock Lake Mining Company, Sault Ste. Marie, Mich.

Mr. Holden states that the Rock Lake Mining Company is organized under the Canadian laws, and that the mines and "home office are situated in Canada," and he wishes a ruling upon each of the following questions:

(1) Are certificates of stock in the above-named company subject to taxation when sold or delivered to persons residing within the United States?

You will please advise Mr. Holden that certificates of stock of a foreign corporation when sold or delivered within the United States are liable to the same tax as certificates of stock of any domestic company, association, or corporation.

(2) If certificates of stock are held by persons in the United States, and are assigned in blank on the back thereof, are the certificates subject to taxation because of such assignment, the articles of incorporation providing that the certificates are transferrable only upon the books of the company upon surrender of the certificates?

You will please advise Mr. Holden that the answer to question No. 1 applies to this question as well.

(3) Does a proxy to vote abroad, but executed in this country, require to be stamped?

You will please advise Mr. Holden that a proxy to vote abroad, but executed in this country, does not require to be stamped.

(4) Does a certificate of stock, when the home office of the company is in Canada, require to be stamped if, as a matter of fact, one or more of the necessary officers sign it within the United States?

You will please advise Mr. Holden that the mere signing of a certificate of stock of a foreign corporation by the officers thereof within the United States does not subject same to the stamp tax, but if, as stated in answer to question No. 1, said certificate is sold or transferred within the United States, it would then become subject to taxation.

(5) Does a deed or mortgage of Canadian real estate executed within the United States on Canadian forms of conveyance to Canadian purchasers require stamps?

You will please advise Mr. Holden that a deed or mortgage on Canadian real estate executed in the United States and to be delivered in Canada to Canadian purchasers is not subject to taxation under the act of June 13, 1898.

Respectfully, yours, G. W. WILSON, *Commissioner.*

Mr. CHARLES WRIGHT, *Collector Internal Revenue, Detroit, Mich.*

(21277.)

Transfer of stock.

When a certificate of stock is presented for transfer and the power of attorney on the back thereof is dated prior to July 1, 1898, although the name of the transferee is not filled in until after that date, both the power of attorney and the certificate are required to be stamped.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 14, 1899.

SIR: This office is in receipt of a letter under date of June 6, 1899, from A. J. Miller, secretary of the Equitable Securities Company, 58 Pine street, New York, N. Y., who submits the following question for a ruling:

Where a certificate of stock is presented for transfer and the power of attorney on the back of the certificate is dated prior to the 1st day of July, 1898, although the name of the party to whom the stock is to be transferred is not filled in until after the 1st day of July, 1898, does the power of attorney require a revenue stamp, and also should the certificate be stamped?

You will please advise Mr. Miller that in the opinion of this office the transfer of the stock referred to was not completed prior to the 1st of July, 1898. The stock had been purchased and the certificate had been indorsed in blank and delivered before the 1st of July, 1898, and the stock had not been transferred upon the corporate books. After the 1st of July, upon request of the holder of the certificate to enter the transfer on the books of the company, the certificate is surrendered and the blank power of attorney on the back of the certificate filled in, and thereupon the stock is transferred upon the books of the company to the purchaser. This office holds that, under the circumstances hereinbefore described, the certificate when surrendered for transfer after July 1, 1898, should be stamped at the rate of 2 cents per \$100 or fraction thereof of par value, and the power of attorney on the back of the certificate requires a 25-cent stamp.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. C. H. TREAT, *Collector Second District, New York, N. Y.*

(21315.)

Stamp tax—Taxes on transfers of shares of stock.

All transfers taxable, but if transfer is made pursuant to a sale, where the memorandum of sale has been duly stamped, no extra tax accrues.—All transfers of stock in pursuance of gifts, bequests, successions, or conveyances by trustees taxable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 27, 1899.

SIR: In reply to your letter of the 14th instant, relative to the stamp tax on transfers of shares of stock, I have to advise you that this office holds that the law imposes a tax (1) on every sale of stock, (2) on every agreement to sell stock, and (3) on every transfer of stock. But when the agreement to sell results in a sale, or when a sale results in a transfer, there is no double tax, because the stamped memorandum of sale or agreement to sell secures the transfer without stamping the certificate of shares to be transferred.

When a transfer of stock is not the result of a sale or an agreement to sell, the certificate of shares must be stamped according to its par value in order to effect the transfer on the books of the corporation. Such transfers are generally in pursuance of gifts, bequests, successions, or conveyances by trustees to *cestui que trusts*.

There is no other feasible rule than to consider the person in whose name the stock stands as the owner of the legal title, and any transfer to another name as a transfer taxable under the law.

In the case you mention where stock stands in the name of A, but really belongs to B, with whose money it was bought, no relief can be

afforded, because if persons choose to put themselves in such a position they must take the legal consequences. As a matter of administration, it would obviously be impossible for the revenue officers in such cases to constitute themselves a chancery court and take testimony as to secret trusts.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner

Mr. JOHN P. R. SHERMAN, *Boston, Mass.*

TELEGRAPHIC MESSAGES.

(20602.)

Stamp tax on telegrams.

Decision of the United States circuit court, ninth circuit, northern district of California, in the case of J. Waldere Kirk v. The Western Union Telegraph Company.—It is the duty of the maker and signer of the telegram to affix and cancel the stamp.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 20, 1899.

The appended decision of the United States circuit court, ninth circuit, northern district of California, is hereby promulgated for the information of all officers of the Internal-Revenue Service.

G. W. WILSON, *Acting Commissioner.*

[In the circuit court of the United States, ninth circuit, northern district of California.]

J. Waldere Kirk, plaintiff, v. Western Union Telegraph Company (a corporation), defendant. (No. 12689.) Action at law to recover damages in the sum of five thousand dollars, for the alleged neglect of the defendant to transmit a certain telegraphic message presented to the defendant by the plaintiff on the 11th day of August, 1898.

January 3, 1899—Opinion on demurrer.

MORROW, circuit judge:

This is an action to recover damages for the alleged neglect of the defendant to transmit a certain telegraphic message presented to the defendant by the plaintiff on the 11th day of August, 1898. The defendant has interposed a demurrer to the complaint on the ground that it does not appear from the complaint that the telegram alleged therein to have been offered to the defendant for transmission and delivery had upon its face or elsewhere the internal-revenue stamp required by section 7 of the act of Congress, approved June 13, 1898, entitled "An act to provide ways and means to meet war expenditures, and for other purposes."

Section 6 of the act referred to provides as follows:

"That on and after the first day of July, eighteen hundred and ninety-eight, there shall be levied, collected, and paid, for and in

respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons, or party who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule." (30 Stats., 451.)

Section 7 provides:

"That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, any instrument, document, or paper of any kind or description whatsoever, without the same being duly stamped for denoting the tax hereby imposed thereon, or without having thereupon an adhesive stamp to denote said tax, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than one hundred dollars, at the discretion of the court, and such instrument, document, or paper, as aforesaid, shall not be competent evidence in any court." (30 Stats., 452.)

Section 9 provides:

"That in any and all cases where an adhesive stamp shall be used for denoting any tax imposed by this Act, except as hereinafter provided, the person using or affixing the same shall write or stamp thereupon the initials of his name and the date upon which the same shall be attached or used, so that the same may not again be used." (30 Stats., 453.)

Section 18 provides:

"That on and after the first day of July, eighteen hundred and ninety-eight, no telegraph company or its agent or employee shall transmit to any person any dispatch or message without an adhesive stamp, denoting the tax imposed by this Act, being affixed to a copy thereof, or having the same stamped thereupon, and in default thereof shall incur a penalty of ten dollars: *Provided*, That only one stamp shall be required on each dispatch or message, whether sent through one or more companies: *Provided*, That the messages or dispatches of the officers and employees of any telegraph company or telephone company concerning the affairs and service of the company, and like messages or dispatches of the officials and employees of railroad companies sent over the wires on their respective railroads shall be exempt from this requirement: *Provided further*, That messages of officers and employees of the Government on official business shall be exempt from the taxes herein imposed upon telegraphic and telephonic messages." (30 Stats., 456.)

In section 25 of this same act it is provided, under the head of Schedule A, stamp duties: "Dispatch, telegraphic: Any dispatch or message, 1 cent."

It is contended in support of the demurrer that it was the duty of the plaintiff to affix and cancel the internal-revenue stamp provided in the last section, before tendering the dispatch to the defendant for transmission, and that negligence can not be charged against the defendant for its refusal to transmit a message which was not stamped by the plaintiff as required by law.

The real question submitted to the court for decision is this: Upon whom does the law impose the burden of paying the stamp tax—the sender of the message or the telegraph company? The document being subject to tax under Schedule A, the fine or penalty imposed for the omission to affix and cancel the proper stamp is, under section 7, imposed upon the person who makes, signs, or issues the document. The statute is in the disjunctive, and reaches not only the omission of the person who issues a document subject to the tax, but the maker and signer of the instrument. The law for this purpose takes notice, therefore, of the person who writes out and signs a dispatch, and makes him liable for the omission to stamp the instrument he creates. By the terms of the stamp schedule the tax of 1 cent is placed upon this instrument as prepared by the sender, without reference to any act of the telegraph company in transmitting the message to its destination. The instrument described is a “dispatch, telegraphic: any dispatch or message.” Had it been intended to impose this tax upon the telegraph company, Congress could certainly have identified the subject of taxation as the document transmitted by the telegraph company; and it may be said that the penalty of \$10 provided in section 18 for the default of the telegraph company in transmitting a dispatch or message without the stamp denoting the tax imposed by law is such an identification of the subject intended to be taxed.

But the difficulty with this interpretation of the statute is that it does not relieve the sender from the fine of not more than \$100 for his omission to affix the proper stamp to the dispatch or message as made and signed by him and delivered to the telegraph company for transmission. Two penalties are clearly imposed upon parties engaged in making and transmitting an unstamped dispatch or message—a fine of not more than \$100 upon the party who makes, signs, or issues the document, and a penalty of \$10 upon the telegraph company for transmitting it to its destination, the first being intended to secure the payment of the tax and the latter the attention and service of the telegraph company in the enforcement of the law.

It follows, therefore, that the instrument set forth in the complaint was subject to a stamp tax, and that it was the duty of the plaintiff, as the maker and signer of the instrument, to affix to it and cancel the stamp required by law before he can charge the defendant with neglect in failing to transmit the message to its destination.

The demurrer will be sustained.

TELEPHONE COMPANIES.

(20983.)

Telephone messages and conversations.

The person, firm, or corporation starting the message or conversation on its course should make return on Form 424.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 6, 1899.

SIR: Your letter of January 20, 1899, concerning the making of returns of telephone messages on Form 424, has been received.

You ask, in effect, which firm or corporation is liable to make the return (Form 424) where a message upon which the tax of 1 cent is required passes over more than one line owned or operated by more than one firm or corporation.

In reply, you are informed that the person, firm, or corporation owning or operating the telephone line or lines who or which transmits the message or conversation from the owner of the message to be sent is the person, firm, or corporation liable to make the return (Form 424). It is held that not all the lines over which the message or conversation passes are liable, but only the line which starts the message or conversation on its course.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Mr. J. C. LYNCH, *Collector First District, San Francisco, Cal.*

THEATERS.

(See EXHIBITIONS AND SHOWS.)

TOBACCO, CIGARS, AND SNUFF.

(See also DECISIONS 20592, p. 91; 20603, p. 48.)

(20480.)

Storage of leaf tobacco by manufacturers.

In case manufacturers of tobacco or cigars have not sufficient room in which to store their material, the Commissioner, upon application and for sufficient cause, will permit outside storage, provided the makers of the bond will indorse thereon their assent to be bound for transactions at the place where the tobacco is stored.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 3, 1899.

SIR: This office has received a letter, dated the 24th ultimo, from Messrs. F. & M. Herbs, proprietors of tobacco factory No. 5 and cigar factory No. 58, at Hudson, N. Y., in your district, in which they state that they have been informed by Deputy Collector Coffin that they "must store all their tobacco, both stemmed and unstemmed, on the factory premises; that any tobacco, either stemmed or unstemmed, that is found outside of such factory premises will be liable to seizure and forfeiture," and they ask whether they have the right to store their material off the factory premises.

You are advised that under date of October 11 this office, in a parallel

case, advised the collector that manufacturers of tobacco would be permitted to store leaf tobacco off their bonded premises provided they would enter the same on their manufacturer's books, forms 73 and 74, and monthly return 62 and 72, respectively; but that it was desired by the office that the tobacco should be stored on the factory premises when possible, and that if stored elsewhere there would be a chance at the close of the calendar year of it being overlooked and not correctly reported, either on the manufacturer's book or on his annual inventory, and that this would afford the manufacturer an opportunity, if he desired it, to falsify his accounts and would render proposed assessments uncertain and unsatisfactory. Therefore, manufacturers would be required to store their tobacco on their bonded factory premises unless there was a good and reasonable cause shown why they could not so store it, and, in such case, the facts should be reported to this office, and if found necessary and expedient, the Commissioner would grant manufacturers permission to store their material off the factory premises with the understanding that the makers of the bond should indorse thereon their assent to such outside storage and their willingness to be bound for the manufacturer's transactions at the place where the tobacco is so stored.

Respectfully, yours,

N. B. SCOTT, *Commissioner.*

Mr. JOHN G. WARD, *Collector Fourteenth District, Albany, N. Y.*

(20482.)

Leaf tobacco.

Under existing law the farmer or grower of tobacco has the right to sell tobacco of his own growth and raising to any person and in any quantity which may be desired, provided its condition has not been changed in any manner. This is a personal privilege and can not be delegated by him to another person.—The farmer can not employ another person to travel from place to place to sell and deliver tobacco to consumers, nor has he the right to place the tobacco in the hands of another person to be sold for him to consumers, but he may place it in the hands of a qualified dealer in leaf tobacco to be sold on commission to other qualified dealers, or to manufacturers of tobacco or cigars, or to persons who buy leaf tobacco in packages for export.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 3, 1899.

SIR: In reply to your letter of the 22d ultimo, asking for a copy of decision 19877,¹ relating to the sale of leaf tobacco by the farmer,

¹ Compilation of Decisions Rendered by the Commissioner of Internal Revenue under the War-Revenue Act of June 13, 1898 (January, 1899), page 277.

and in which you ask to be informed whether a farmer has a right to ship his tobacco and then sell to the consumer from the original package in the hand or bundle without manipulation, and whether it would be necessary for the farmer so selling to be the actual grower, or could he sell through his employee, you are advised that the office has no extra copies of this decision.

It is held in that decision that farmers and growers of tobacco are permitted to sell tobacco of their own growth or raising, either in the hogshead, case, or bale, or loose in the hand, without restriction, but are not permitted to stem, twist, roll, plait, sweeten, cut, or grind, or otherwise reduce the tobacco from its natural condition to sell the same to consumers; that if the farmer confines the sale to tobacco of his own growth and raising, and in its natural condition, he will not be required to register and pay special tax as dealer in leaf tobacco.

In decision 19962¹ it is held that a farmer can not employ an agent to travel from place to place and sell and deliver his tobacco, but that he may himself sell and deliver the tobacco in any quantity; that if the tobacco is sold on sample by an agent it must be delivered by the farmer or grower himself directly to the consumer.

In this connection, it is well to state that the privilege granted the farmer or grower of selling his tobacco to any person and in any quantity is a personal privilege which can not be delegated by him to another person, and he would not have the right to ship his tobacco to another person to be sold by such person directly to consumers, but he may place it in the hands of a qualified dealer in leaf tobacco to be sold to other qualified dealers or to manufacturers, or to persons who purchase tobacco in packages for export.

If the tobacco is placed in the hands of unauthorized persons who would sell or attempt to sell and deliver the same to consumers, it would be liable to seizure and forfeiture, and the person so selling the same would be subject to prosecution for engaging in and carrying on business without qualifying as a manufacturer and properly packing his tobacco and labeling, marking, branding, and stamping the packages. (See regulations, series 7, No. 8, revised, relating to tax on tobacco.)

Respectfully, yours,

N. B. SCOTT, *Commissioner*.

Mr. W. B. HAWKINS,

Chairman Tobacco Growers' League, Lexington, Ky.

¹ Compilation of Decisions Rendered by the Commissioner of Internal Revenue under the War-Revenue Act of June 13, 1898 (January, 1899), page 278.

(20546.)

Sale of refuse scraps, cuttings, clippings, and sweepings of tobacco.

Dealers in leaf tobacco and other persons who have qualified as manufacturers of tobacco for the purpose of dealing in refuse scraps, cuttings, clippings, and sweepings of tobacco have the right as manufacturers to cut, grind, assort, size, clean, and otherwise reduce their leaf tobacco and tobacco cuttings, scraps, etc., preparatory to being used as material in the manufacture of cigars, smoking tobacco, or other kind of manufactured tobacco; but if their product is a merchantable manufactured tobacco, cut or granulated smoking or chewing tobacco, the same must be properly packed, labeled, branded, and stamped before removal from the place of manufacture.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 13, 1899.

SIR: This office has received your letter of the 9th instant, in which you state that the McClurg Leaf Tobacco Company have qualified as manufacturers of tobacco and have presented the question whether they will have the right to use a cutting machine and manufacture short fillers for cigars, and which material could also be used for smoking tobacco, and you also state that they desire to sell all their product as material to duly qualified manufacturers of cigars without payment of tax.

In reply, you are advised that they have the right to assort, size, cut, grind, clean, and otherwise reduce their tobacco preparatory to its use in the manufacture of plug, twist, cavendish, or other kinds of manufactured tobacco. If their product becomes a merchantable manufactured tobacco or a cut or granulated tobacco, the process or manufacture of which has been completed, they are required to properly pack, label, brand, and stamp the same before it can be removed from the factory or place of manufacture, and such finished product can not be sold in bulk as material and without payment of tax, directly by one manufacturer to another.

The collector is required, in all cases, when an application is made to him for the transfer under section 3362, Revised Statutes, of fine-cut shorts, the refuse of fine-cut chewing tobacco, refuse scraps, clippings, cuttings, and sweepings of tobacco, in bulk, as material, and without payment of tax, directly to another manufacturer, to be satisfied that such material is not a merchantable chewing or smoking tobacco, fine-cut, plug, cavendish, or twist, cut or granulated tobacco, the process or manufacture of which has been completed, as such material can only be transferred for the purpose of being further manipulated, manufactured, or mixed with other manufactured tobacco preparatory to the same being properly packed, labeled, branded, and stamped and put upon the market.

If the collector finds that the tobacco prepared by the manufacturer is a finished product, the process or manufacture being com-

pleted, he will require the manufacturer to properly label, brand, pack, and stamp it before its removal from the factory.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. JAMES S. FRUIT,

Collector Twenty-third District, Pittsburg, Pa.

(20584.)

Dealers in leaf tobacco.

Dealers in leaf tobacco not permitted to manufacture fertilizers, insecticide, or sheep dip from leaf tobacco or tobacco material, for the purpose of selling their products to the general trade.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 18, 1899.

SIR: Referring to your letter of the 10th instant, inclosing one from Evans Brothers' Tobacco Warehouse Company, dealers in leaf tobacco, you are advised that dealers in leaf tobacco are not permitted to manufacture insecticide, sheep wash, or fertilizers from leaf tobacco or tobacco material. They are required to confine their sales to three classes of persons, (1) to other qualified dealers in leaf tobacco; (2) to manufacturers of tobacco or cigars; (3) to persons who purchase leaf tobacco in packages for export.

Persons who qualify as manufacturers of tobacco have the right to convert tobacco material into fertilizers, insecticide, and sheep wash, and after such material has been so converted it is required to be mixed with ashes, lime, sulphur, bone dust, or other noxious substance and rendered unfit for use as smoking tobacco or snuff.

After the deputy collector in charge has inspected the fertilizers, insecticide, and sheep wash, the same may be sold to the trade by the manufacturer without payment of tax.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. H. C. GRENNER, *Collector First District, St. Louis, Mo.*

(20586.)

Loss of cigars from factory by theft.

Manufacturers claiming loss of cigars by theft are required to file satisfactory evidence showing that the cigars were actually stolen.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 18, 1899.

SIR: Replying to your letter of the 14th instant, you are advised that the manufacturer claiming a loss of 925 cigars by theft will be

permitted to file his affidavit and other satisfactory evidence showing, or tending to show, that the cigars were actually stolen at one time, or at different times by persons not connected with the factory. Any alleged peculation by employees running from time to time during the year will not be allowed as a credit on the manufacturer's account.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. A. B. WHITE,

Collector Internal Revenue, Parkersburg, W. Va.

(20597.)

Dealers in tobacco or snuff.

Dealers in tobacco or snuff not permitted to break original packages of tobacco or snuff for the purpose of repacking in smaller packages.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 20, 1899.

SIR: This office has received a letter, dated the 18th instant, from The Froelich Trading Company, Halifax, in your district, in which they ask whether it will be a violation of law to divide 5-cent packages of snuff and put them up in smaller packages one-half the size.

You will advise them that no one but a qualified manufacturer of tobacco or snuff has the right to prepare and put up these products, and that dealers in tobacco, snuff, or cigars are not permitted to break the packages and repack goods in any quantity, but must sell the same from the original stamped packages as prepared and put up by the manufacturer.

Unstamped packages containing manufactured snuff or tobacco found in possession of dealers would be subject to forfeiture.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. EDWARD C. DUNCAN, *Collector Fourth District, Raleigh, N. C.*

(20598.)

Cigar packages.

A box made from tin, and similar in size to the ordinary commercial wooden box, which will admit of the proper labels, marks, brands, and stamps, and upon which the caution notice is directly imprinted, approved, under regulations, for use as a substitute for the ordinary commercial wooden box for packing cigars.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 20, 1899.

SIR: Referring to a sample tin box, which is proposed to be used by Cameron & Cameron, cigar manufacturers at Richmond, cigar factory

No. 57, as a substitute for the commercial wooden cigar box, and referred to by you in person yesterday, you are advised that this box will be approved as a substitute for the ordinary commercial wooden box, in which to pack a statutory number of cigars, the same to be properly stamped, labeled, and branded.

Your attention is called to the space which is indicated on the box for the reception of the stamp. The regulations require that the space reserved for the stamp shall be sufficient to receive the cancellation by waved lines, three-fourths of an inch on either side of the stamp. These stamps should be placed more toward the middle of the box than indicated on the sample. The caution notice is imprinted directly on the package in a plain and legible manner in black-faced type. The office at present sees no objection to imprinting the caution notice directly on the box. The factory number, and the number of the district, the State, and the number of cigars to be contained in the package, should not be printed on the box, but should be stamped, indented, or burned, or impressed into the box, as required by the regulations, Cigar Manufacturers' Tax Manual, page 23, and section 3397, Revised Statutes, as amended in section 16, act of March 1, 1897.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

MR. J. D. BRADY, *Collector Second District, Richmond, Va.*

(20600.)

Tobacco packages.

Manufacturers are not permitted to put up smoking tobacco in packages containing $6\frac{1}{2}$ ounces of tobacco and affix two $3\frac{1}{4}$ -ounce stamps on such package.—No provision made by law for packages containing such quantity of tobacco.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 20, 1899.

SIR: This office has received information from a district adjoining yours that W. S. Stockwell, cigar factory No. 11, has been putting an irregular $6\frac{1}{2}$ -ounce package of smoking tobacco (cigar clippings) upon the market, bearing two $3\frac{1}{4}$ -ounce stamps, in violation of the law and regulations.

Please call the attention of this manufacturer to the irregularity, and advise him that he must discontinue the use of such package at once.

The law makes no provision for a $6\frac{1}{2}$ -ounce package, and the regulations require that a package of smoking tobacco shall be covered by a single stamp denoting the quantity of tobacco contained in such package.

Any disposition shown by the manufacturer to disregard the law and regulations will be reported to this office, reference being made to this letter.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. J. E. HOUTZ, *Collector Internal Revenue, Omaha, Nebr.*

(20601.)

Small cigars.

Unstamped sample packages containing two small cigars, weighing not more than 3 pounds per thousand, will not be authorized. Such cigars are required to be put up in stamped packages containing 10, 20, 50, or 100 cigars each, respectively.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., January 20, 1899.

SIR: This office has received a letter from the Emir Cigarette and Tobacco Company, 413 West Broadway, New York City, together with two sample boxes of "Emir Little Cigars," in which they state they propose to pack two small cigars, and afterwards repack the small boxes in cartons of 200 or 400 cigars each, for the purpose of distributing the same to consumers gratis, and to attach to each carton a cigar stamp of the proper denomination. They have been referred to you.

In reply, you are advised that these small cigars weighing not more than 3 pounds per thousand, are required to be put up in the packages of 10, 20, 50, or 100, respectively, and properly stamped, and stamps canceled. Thereafter, these small packages may be repacked in boxes or cartons, containing 100, 200, 250, or 500 cigars each; these last boxes to have stamped, indented, burned, or impressed into them, in a legible and durable manner, the number of the factory, number of district, State, and the number of cigarettes contained in each box, and the caution-notice label is required to be affixed thereto.

Cigarettes and small cigars weighing not more than 3 pounds per thousand are required to be put up in this manner, and there is no provision of law by which the manufacturer can put two cigars in a single package and afterwards repack 200 or 400 of these small packages in a carton or box which is to be stamped or labeled; nor is there any provision of law or regulation made by which the manufacturer can put up samples for gratuitous distribution unless he shall pack his small cigars or cigarettes in 10's, 20's, 50's, or 100's each, and properly stamp each small box of these denominations.

Attention is called to the Cigar Manufacturers' Tax Manual, special No. 85, page 22.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. FERDINAND EIDMAN,

Collector Third District, New York, N. Y.

(20605.)

Sale of leaf tobacco by manufacturers.

A manufacturer purchasing large quantities of leaf tobacco, exceeding the demands of his factory, for the purpose of reselling his surplus to other manufacturers, must be regarded as engaged in and carrying on the business of a dealer in leaf tobacco, and will be required to make return and pay special tax as dealer in leaf tobacco at some place not connected with the factory.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 23, 1899.

SR: This office has received your letter, dated the 12th instant, which presents the question whether a manufacturer can make it his business to purchase leaf tobacco largely in excess of the demands of his factory, and which tobacco is not intended for his own use, but for resale to other manufacturers, without his being required to qualify and pay special tax as a dealer in leaf tobacco.

In reply, you are advised that a manufacturer may sell directly to another manufacturer of tobacco or cigars any quantity of leaf tobacco desired for use at his factory exclusively.

The manufacturer desiring to sell the tobacco is required, under the regulations, to make application to the collector of his district for special permission to sell and transfer the tobacco.

If a manufacturer purchases large quantities of leaf tobacco, exceeding the demands of his factory, for the purpose of reselling his surplus to other manufacturers, he must be regarded as engaged in and carrying on the business of a dealer in leaf tobacco; and it will be the duty of the collector in such case to require such manufacturer to make return and pay special tax as dealer in leaf tobacco at some place not connected with his factory.

Manufacturers of cigars have the right to purchase from other manufacturers of tobacco or cigars small quantities of stemmed, unstemmed, resweated, and booked tobacco, less than the original package, for use in their own manufactories exclusively. When the material is desired for immediate use, the collector is authorized to issue a special permit at once without referring the application to the Commissioner.

A large number of persons manufacture cigars on order, and only buy such material as they need for immediate use, and in a number of cases orders are secured through manufacturers who handle the cigars. There is in such cases community of interests between the manufacturers, and it is not the purpose of this office to discourage transactions of this character.

Collectors are, therefore, expected to use their best judgment with reference to issuing special permits for the sale of leaf tobacco and tobacco material. It will be their duty to determine, from time to

time, whether the manufacturers are confining themselves within the limits of prescribed regulations, and to take such action in each case as the circumstances may require.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner*

Mr. MICHAEL W. SUTTON,

Collector Internal Revenue, Leavenworth, Kans.

(20633.)

Special tax—Tobacco dealers and manufacturers.

Tobacco dealers and manufacturers not engaged in business during the preceding fiscal year will pay the minimum rate of tax.—The party paying the tax will be required to make return and pay a higher rate when sales exceed the limit.—Special-tax stamp to be issued in each case to cover the period of time in which the liability to special tax commenced to the 1st day of July following.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 24, 1899.

SIR: Referring to your letter of the 20th instant, in which you present the case whether a manufacturer of cigars commencing business October 1, 1898, paying special tax of \$4.50 pro rata will entitle him to manufacture 100,000, or only nine-twelfths of that sum, and whether, if the sales exceed 100,000, he should pay a special tax of \$9, dating from October 1, 1898; also, when he exceeds 50,000 before the expiration of the year, whether he is not liable to pay \$18 from October 1, 1898, you are advised that the special-tax liability of persons who were not engaged in business as tobacco dealers or manufacturers during the preceding fiscal year depends entirely upon the construction placed upon section 4, act of June 13, 1898.

This construction is, that a person not previously engaged in business will, upon commencing business, pay the minimum rate of tax imposed on the occupation, and under section 3237, Revised Statutes, the tax will be reckoned proportionately from the 1st day of the month in which the liability of special tax commenced to the 1st day of July following.

A manufacturer of cigars paying the tax, either for the whole year or at the proportionate rate for part of the year, will not be required to make return and pay tax at the higher rate until his sales shall exceed 100,000 cigars; and if his sales exceed at any time 100,000, he will be required to pay special tax at the rate of \$12 from the time he commenced business, and if before the close of the year his aggregate monthly sales exceed 200,000, he will be required to make a new return and pay special tax at the rate of \$24 per annum from the time he

commenced business, and will return to the collector the special-tax stamp previously issued at the lower rate.

You state that you have in several cases collected the higher rate of tax from manufacturers of cigars who commenced business since July 1, 1898, and exceeded 100,000, charging them said higher rate from the 1st day of the month in which they commenced business, and issuing special stamp to cover that period.

In reply to your question, you are advised that the office is of the opinion that you have correctly construed the law in such cases.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. JAMES S. FRUIT,

Collector Twenty-third District, Pittsburg, Pa.

(20635.)

Sale of tobacco scraps, etc.

Dealers in leaf tobacco are not permitted under the law to purchase refuse scraps, cuttings, clippings, or sweepings of tobacco for the purpose of selling the same to other dealers in leaf tobacco.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 26, 1899.

SIR: Referring to your letter of the 19th instant, inclosing one from Messrs. Thorpe & Ricks, who are dealers in leaf tobacco, and who have paid special tax as manufacturers of tobacco, you are advised that dealers in leaf tobacco are not privileged to purchase tobacco stems, refuse scraps, cuttings, clippings, or sweepings of tobacco for the purpose of reselling the same to other dealers in leaf tobacco.

Tobacco stems are largely used in the manufacture of snuff, and are considered as tobacco material, and they must be properly accounted for on the book of the manufacturer, both when he purchases stems and when they are sold. A dealer in leaf tobacco has the right to sell stems which are taken from the leaf by him at his stemmery, but he has no right to buy and sell tobacco stems under his license as a dealer in leaf tobacco. (Ruling modified as to sale of tobacco stems; see decision 21518, page 266.)

The special-tax stamp issued in this case should not be redeemed as these persons have, under the law and the regulations, incurred liability to tax as manufacturers of tobacco.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. E. C. DUNCAN, *Collector Fourth District, Raleigh, N. C.*

(20638.)

Special tax imposed on dealers in leaf tobacco.

Dealers in leaf tobacco who have several warehouses at which they receive tobacco, and from which the same is delivered to the purchaser, required to pay special tax at each place.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 26, 1899.

SIR: This office has received your letter of the 21st instant, in which you call attention to the internal revenue rulings 6 and 11 (p. 17 and 18, series 7, No. 8, revised), in which it is held—

(6) Persons who go from farm to farm and purchase leaf tobacco, and then place it in several warehouses and subsequently sell the tobacco from these warehouses, will be liable to special tax as dealers in leaf tobacco at the several places where the tobacco is stored and from which it is sold.

(11) Persons who sell and deliver leaf tobacco from several warehouses will be regarded as dealers in leaf tobacco at each place; but where the tobacco is bought at several places and the entire lot is shipped to one place, to be resold at that place, they will only be required to pay special tax at the place where they sell tobacco.

It appears to the office that the case you present should come under one of these rules, if not both, and that the dealer in leaf tobacco will be required to qualify and pay a special tax at each place where he is carrying on business; but, to amplify the rulings so that the case presented may be properly determined by you, you are advised that where a dealer in leaf tobacco has several warehouses in which he temporarily stores his tobacco, and from which he afterwards reships the tobacco to himself at another warehouse, from which he sells the tobacco, he would only be required to pay special tax for the place where he last receives and sells the tobacco.

If, in fact, leaf tobacco is purchased and placed in a particular warehouse for the purpose of being sold and delivered to the purchaser from that warehouse, the case would not come within the exception provided by section 3235, Revised Statutes, and could not be considered as having been temporarily stored at that place, and the dealer would be liable to special tax at that particular place, notwithstanding he may have had an office and kept his books at another place.

If the owner has a superintendent or employee at each warehouse where he buys and receives tobacco, and from which he sells and delivers tobacco, he will be required to make return and pay special tax for each place.

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. D. N. COMINGORE. *Collector Sixth District, Covington, Ky.*

(20644.)

Tobacco fertilizers.

Manufacturers of cigars are not permitted to manufacture tobacco fertilizers, sheep wash, or insecticide from leaf tobacco or tobacco stems for the purpose of selling these articles to the trade.—Manufacturers of tobacco under the regulations are permitted to manufacture these products.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 27, 1899.

SIR: This office has received a letter dated 17th instant, from J. Hensen, a cigar manufacturer at Maryville, Mo., in which he asks whether he will be permitted to mix sulphur with his tobacco stems and afterwards sell the same as a disinfectant for hogpens, and as an insecticide and fertilizers.

You will advise him that manufacturers of cigars and dealers in leaf tobacco are not permitted to manufacture insecticide, sheep wash, or fertilizers from leaf tobacco or tobacco material. The latter are required to confine their sales to three classes of persons, (1) to other qualified dealers in leaf tobacco; (2) to manufacturers of tobacco or cigars; (3) to persons who purchase leaf tobacco in packages for export.

Persons who qualify as manufacturers of tobacco have the right to convert tobacco material into fertilizers, insecticide, and sheep wash, and after such material has been so converted it is required to be mixed with sulphur, ashes, lime, bone dust, or other noxious substance and rendered unfit for use as smoking tobacco or snuff.

After the deputy collector in charge has inspected the fertilizers, insecticide, and sheep wash, the same may be sold to the trade by the manufacturer, without payment of tax:

Respectfully, yours,

G. W. WILSON, *Acting Commissioner.*

Mr. FRANK E. KELLOGG, *Collector Sixth District, Kansas City, Mo.*

(20674.)

Subdivisions of cigar packages.

Subdivisions of statutory packages are only authorized when they consist of a paper (unsealed) wrapper or inclosure cut off at one end, so that the cigars will be exposed.—Subdivisions which conceal the cigars, so that their size and number can not be ascertained without being withdrawn from the statutory package, are in violation of the regulations.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., February 2, 1899.

GENTLEMEN: This office is in receipt of your letters, dated the 26th and 27th ultimo, respectively, and also copy of letter from Revenue

Agent Williams, dated the 25th ultimo, relating to the irregular manner in which you have been putting up your cigars—that is, in small pasteboard boxes, closed at both ends, containing 10 cigars each, these small boxes being repacked in statutory packages properly labeled, branded, and stamped.

The question presented is whether manufacturers of cigars should be permitted to subdivide their statutory packages and adopt and use subdivision packages similar to the ones described.

The regulations, Cigar Manufacturers' Tax Manual, Special No. 85, page 21, provide that—

Subdivisions or parcels of packages for cigars have been permitted when consisting of a paper (unsealed) wrapper or inclosure cut off at one end, the butts or ends of the cigars or cheroots protruding therefrom, exposing the contents; said subdivisions or parcels to be packed in statutory packages properly labeled, branded, and stamped.

It has been held by the office repeatedly that manufacturers must make their subdivision packages conform to the regulations, and that the same must be open at one end, so that the cigars will be exposed; and, further, that a package with two flaps, one at each end, would not be approved for use by manufacturers; that these flaps which constitute the ends of the package when folded complete and make a perfect box concealing the size, kind, and number of the cigars contained in such package. These small packages are, in every respect, similar to those used by manufacturers in packing small cigars, weighing not more than 3 pounds per thousand, and cigarettes, the manufacturers of which are required to affix to each small package of 10, 20, 50, or 100 an internal revenue stamp denoting the payment of tax on the cigars contained in such package. There is no provision made by law for a statutory package containing less than 12 cigars, and this office could not, as suggested by you, furnish manufacturers with a stamp for 10 cigars weighing more than 3 pounds per thousand, the tax on which is \$3.60 per thousand. This office is, therefore, constrained to require you, and all other manufacturers of cigars, to subdivide their statutory packages in the manner prescribed by the regulations when desiring to make use of subdivision packages.

Respectfully, yours,

G. W. WILSON, *Deputy Commissioner.*

The HILSON COMPANY, *New York, N. Y.*

(21046.)

Sale of leaf tobacco.

Dealers in leaf tobacco, having paid a special tax to engage in or carry on business at a public warehouse, may buy and resell loose leaf tobacco, which constitutes the breaks on warehouse floors, without being required to repack the tobacco in hogsheads, cases, or bales.—Loose leaf tobacco purchased by them outside of the public warehouse from the farmer or grower of the tobacco is required to be repacked in hogsheads, cases, or bales before sale and removal from their place of business.

Exception: Cigar leaf tobacco may be sold by a qualified leaf dealer directly to a qualified manufacturer of cigars, in quantities less than a case or bale, for use in his own manufactory exclusively.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 20, 1899.

SIR: In answer to your telegram dated the 18th instant, asking whether there is a ruling made by this office to the effect that "after a leaf dealer purchases leaf tobacco he can not resell it loose in the hand, as is now being done, and if true it would work a great injury to the tobacco interest in your section," I have the honor to call your attention to subdivision 6 of section 3244, Revised Statutes, and section 4, act of June 13, 1898, also to the second paragraph of section 69, act of August 28, 1894, which statutes, in the order named, define the occupation, fix the liability, and prescribe the rule governing the sale of leaf tobacco by any person other than the farmer or grower.

Qualified dealers in leaf tobacco are required to confine their sales to other qualified dealers and to manufacturers of tobacco or cigars, or to persons who purchase leaf tobacco in packages for export and are not permitted to sell in quantities less than a hogshead, case, or bale, with two exceptions—

First. Qualified dealers are permitted to sell leaf tobacco directly to qualified manufacturers of cigars, in quantities less than a case or bale, for use in their own manufactories exclusively.

Second. Qualified leaf dealers who carry on business at public warehouses may buy loose leaf tobacco, constituting the breaks on the warehouse floors, and may subsequently resell the tobacco, before removal from the warehouse, without being required to repack it in hogsheads, cases, or bales.

Leaf dealers who buy loose leaf tobacco from the farmer or grower of the tobacco, outside of a public warehouse, before offering to sell and deliver the same from their place of business, are required to repack it in hogsheads, cases, or bales, unless the same is cigar leaf and sold directly to a cigar manufacturer for use in his own manufactory exclusively, as before stated.

Prior to October 1, 1890, leaf dealers who sold tobacco in quantities less than a hogshead, case, or bale were regarded as retail dealers, and required to pay annually a special tax of \$250, and 30 cents on each dollar on amount of their monthly sales in excess of \$500 per annum. These special taxes were repealed by section 26, act of October 1, 1890. The 30 cents imposed on each dollar on amount of monthly sales in excess of \$500 per annum was held to be special tax, and included in the repeal. Since that date no person has been recognized as being engaged in the business of retailing leaf tobacco.

The act of June 13, 1898, imposes special taxes upon dealers in leaf tobacco at the rates graduated according to the extent of the business

done, and no person under that act is recognized as a retail dealer in leaf tobacco. * * *

Respectfully, yours, G. W. WILSON, *Commissioner.*
Hon. JOHN L. McLAURIN, *Bennettsville, S. C.*

(21167.)

Removal of cigars from factory by a sheriff or constable.

Where a sheriff or constable removes cigars from a cigar factory without the same being properly boxed and stamped, as required by section 3397, Revised Statutes, as amended, and sells the same unstamped, he is liable to the penalty as prescribed under said section.—Instructions as to further action in such cases.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 16, 1899.

SIR: This office is in receipt of a letter from Mrs. B. Nelson, 119½ First avenue south, Great Falls, Mont., under date of 4th ultimo, who has been referred to you, asking if any person has the right, in case of attachment, to take boxes of cigars unstamped out of a cigar factory for security.

From the statements made by Mrs. Nelson, I understand a sheriff or constable, under process issued by the local court for the benefit of a creditor of a cigar manufacturer, has seized the unstamped boxes of cigars which were located in said factory.

You are advised that it is not the policy of the Government to interfere with the rights of citizens under State laws any further than such interference is necessary to preserve the rights of the United States. It is not stated whether or not these seized cigars were sold by said officer without his having first procured the proper internal-revenue stamps and stamped said cigars before delivery to the purchaser at the court sale.

The sheriff, in pursuance of his duty, is presumed to have been authorized to take possession of the cigars and tobacco, but if he removed the cigars from the factory without the same being properly boxed and stamped, as required by section 3397, Revised Statutes, as amended, and sold the same unstamped, he has committed an offense whereby he has incurred the penalty prescribed in said section.

Unstamped boxes of cigars in the hands of a purchaser at a court sale are liable to seizure by internal-revenue officers (section 3398, Rev. Stat.).

A similar case arose in Delaware several years ago. Humphrey Morrow, a State constable, was indicted and tried in the United States district court for selling unstamped cigars. He had levied on the cigars under a writ of *feri facias* issued by a justice of the peace.

His counsel raised the question as to whether such a sale came within the purview of section 89, act of July 20, 1868 (now embodied in section 3397, Revised Statutes), and the court decided that it did. The sale being undisputed, the jury found him guilty. He was afterwards pardoned by the President.

If a sale of unstamped boxes of cigars has been made by the officer, you will obtain all the facts in this case and report them to the United States attorney, and advise with him as to the proper course to be taken. If there was no wrong intention, and the sheriff acted without knowledge of what was required, my judgment would be, not to subject him to a criminal prosecution if he has made a sale, but to inform him of his liability and warn him against any repetition of the offense.

An inventory should be taken of the contents of the cigar factory and a report made of the number of cigars and quantity of tobacco and all materials taken by the sheriff, in order that an examination may be made by this office to ascertain whether there was any shortage for which an assessment should be made.

The sheriff or constable probably made an inventory of the goods which he levied upon, and perhaps you can obtain and furnish a copy of that. Due credit will be given the manufacturers for the materials removed by the officer in estimating the amount of tax which may be due.

Respectfully, yours, G. W. WILSON, *Commissioner*.

Mr. CHARLES M. WEBSTER,
Collector Internal Revenue, Helena, Mont.

(21257.)

Seizure and sale of cigars.

Sample packages containing either a less or a greater number of cigars than denoted by the stamp affixed to the packages are subject to forfeiture.—A manufacturer of tobacco or cigars can not lawfully carry on business on factory premises as a dealer in tobacco, snuff, or cigars made at other manufactories, and if he desires to buy and sell products of other factories he must carry on such business at some place separate from his factory premises.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 12, 1899.

SIR: Referring to two reports, dated 25th ultimo, from Revenue Agent Thomas relating to the seizure of 43 boxes of cigars found in the possession of Messrs. Allen & Lewis, tobacco dealers, which contained either a less or a greater number of cigars than denoted by the stamp affixed to the packages, in violation of sections 3392 and 3393, and also to the seizure of 18 similar boxes found in the possession of

Sig Sichel & Co., cigar factory No. 1, it will be proper for you, preparatory to the sale of these cigars, to take from certain packages the cigars in excess of the number denoted by the stamp and distribute the same to other packages having a number of cigars less than denoted by the stamp. After you have repacked these cigars in the original boxes, placing in each a statutory number of cigars, you will, from the proceeds of the sale, pay first the expenses of sale, and appropriate from the remainder of the proceeds a sum sufficient to pay the tax due on the cigars sold and furnish the purchasers with the required stamps, the same to be affixed to the packages by the deputy collector, who will cancel the stamps by writing or imprinting thereon his name and title and the date of use.

If you have any cases not yet reported in which the cigars have been detained, but left in the hands of dealers, you may release the goods, directing that the sample packages should be returned to the manufacturers with the advice that the dealer can not keep such goods in his possession for sale or for advertisement purposes, and that the same are subject to forfeiture under sections 3397 and 3398, Revised Statutes.

It appears that Sig Sichel & Co. operate cigar factory No. 1. This gives their case a different side. Cigar manufacturers are not permitted to carry on business as dealers in manufactured tobacco, snuff, or cigars made at other factories, and all foreign-made goods found on their factory premises are subject to forfeiture. And, under the decision of the Supreme Court of the United States in the case of *Ludloff and others v. The United States* (108 U. S., 176; Int. Rev. Rec., vol. 29, page 129), not only the goods of foreign manufacture, but goods made by the manufacturer himself will be subject to forfeiture.

The office does not, in such cases, desire to seize the goods where there is no intention on the part of the manufacturer to commit fraud or escape payment of taxes, and he should be given an opportunity to separate his own cigars from the cigars made at other factories and remove the latter from the factory premises.

A manufacturer of tobacco or cigars, where he handles tobacco made by other persons, is regarded as a dealer in manufactured tobacco, and must carry on the business in some place separate from his factory premises.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. D. M. DUNNE, *Collector Internal Revenue, Portland, Oreg.*

(21258.)

Special-tax liability.

The liability of a manufacturer of cigars to a special tax is predicated upon the aggregate annual sales for the preceding fiscal year, and special tax is not to be computed on the basis of his sales for a fractional part of the year.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 13, 1899.

SIR: This office has received your letter of the 6th instant, in which you state that C. A. Pulkrabek engaged in the business of manufacturer of cigars in September, 1897, and that for and during that fiscal year ended June 30, 1898, he had sold 141,625 cigars, and, therefore, paid special tax, according to the act of June 13, 1898, of \$12, and that his sales for the fiscal year 1898 exceeded 100,000 but not over 200,000 cigars. You state that his sales for the present fiscal year have already exceeded 200,000 cigars, but that you do not understand he has incurred a liability to a larger rate of tax than \$12, which he paid in September. You also state that Revenue Agent McCoy has reported the case for assessment, taking exception to your ruling.

In reply, you are advised that Mr. Pulkrabek could not pay special tax for the present fiscal year ending June 30, 1899, computed on the basis of his annual sales for the preceding fiscal year, as he was only in business part of that year, from September 1, 1897, to June 30, 1898. The liability of a manufacturer of cigars to special tax is predicated upon the aggregate annual sales for the preceding fiscal year, and not to be computed on the basis of his sales for a fractional part of a year.

This case comes under the rule which requires the manufacturer on commencing business to pay at least the minimum rate of tax, and if his aggregate monthly sales during the year call for a higher rate he is required to make a new return and pay a special tax at the higher rate from the first day of the month in which he commenced business to the 1st day of July following, the special-tax stamp first issued to be returned for redemption at its face value, the manufacturer making claim therefor on Form 38.

A manufacturer of tobacco or cigars desiring to continue business on and after July 1 of any special-tax year, not having been engaged in manufacturing the entire preceding fiscal year, may make return on Form 11 and pay the higher rate of special tax imposed on manufacturers, and if at the close of the year it should be ascertained that his aggregate sales for the entire year did not exceed 200,000 cigars he would have the right to make claim for the amount paid by him in excess of his actual ascertained liability.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. FRED. VON BAUMBACH,
Collector Internal Revenue, St. Paul, Minn.

(21276.)

Special taxes imposed on tobacco dealers and manufacturers.

Persons engaged in business as manufacturers of tobacco or cigars, or dealers in leaf tobacco, during the entire fiscal year ending June 30, 1899, and continuing business on and after July 1, required to pay special tax computed on the basis of their annual sales for this present fiscal year. Those persons who were not engaged in business during the entire preceding fiscal year, but who continue or commence business on or after July 1, may pay either the minimum or the maximum rate of tax, as they may elect. If the aggregate monthly sales of persons paying the minimum rate at any time during the year exceed the limit for which they first paid special tax, they are required to make a new return and pay special tax at the higher rate from the 1st day of July or from the first day of the month in which they commenced business. Those persons who at first pay the higher rate, and it is ascertained at the close of the fiscal year that they have paid an amount in excess of their actual liability, will be permitted to make a claim for the amount so paid in excess.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 14, 1899.

SIR: This office has received your letter of the 8th instant, in which you present two questions which relate to the payment of special tax by manufacturers of cigars under certain conditions.

First. You state that J. M. Martinez, factory No. 405 in your district, had been in business for several years; paid a special tax for the current fiscal year of \$12, computed on the basis of his annual sales for the preceding fiscal year; that up to the present time his sales for the year have amounted to more than 200,000 cigars, and you ask whether he will be required to make a new return (on Form 11) and pay special tax of \$24, and make claim on Form 38 for redemption of \$12, for the special-tax stamp first issued.

In reply, you are advised that his liability having been computed on the basis of his annual sales for the entire preceding fiscal year, he would not be required to pay a higher rate of tax than \$12 during this year, although his aggregate monthly sales have exceeded the limit upon which the tax was first computed. His liability to tax was fixed by the statute, and the case will admit of no other construction.

Second. You ask whether a manufacturer who commenced business during the current fiscal year, for instance, on May 1 last (it is presumed you meant April 1), whose sales during the three months ending June 30, 1899, would have been less than 100,000 cigars, and whose sales for the fiscal year commencing July 1, 1899, would probably aggregate more than 200,000 cigars, would be treated the same as if he had been in business during the entire current fiscal year, so far as the amount of special tax is concerned.

For reply, you are advised that the liability of a manufacturer of cigars or tobacco, or dealer in leaf tobacco, for special tax is predicated upon the aggregate annual sales for the preceding fiscal year, and is

not to be computed, in any case, on the basis of the sales for a fractional part of a year.

A tobacco dealer or manufacturer desiring to continue business on and after July 1, not having engaged in manufacturing or in selling leaf tobacco the entire preceding fiscal year, may make return on Form 11 and pay the highest rate of special tax (\$24), and if at the close of the year it should be ascertained that his aggregate sales for the entire year have not exceeded the intermediate rate (\$12), he would have the right to make a claim for the amount paid by him in excess of his actual liability, or the manufacturer or dealer desiring to continue business on and after July 1 must pay, at least, the minimum rate of tax (\$6), and if his aggregate monthly sales during the year call for a higher rate, he is required to make a new return and pay a special tax at the higher rate from the first day of the month in which he commenced business to the 1st day of July following; and the special-tax stamp first issued may be returned with a claim, made on Form 38, for redemption at its face value.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

MR. JOSEPH E. LEE,

Collector Internal Revenue, Jacksonville, Fla.

(21449.)

Cigar manufacturers buying imported leaf tobacco.

Cigar leaf tobacco in the custody of the Customs Service is not subject to entry on Book 73, and monthly return, Form 72, kept by cigar manufacturers, who must only enter on these records leaf tobacco actually received at the factory.—Imported leaf tobacco, not actually received by the manufacturer at his cigar factory, improperly entered on record Book 73, and monthly return, Form 72, must be stricken from these records and eliminated from the accounts.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 25, 1899.

SIR: Referring to that part of the letter from Revenue Agent Chapman, dated 13th instant, a copy of which has been furnished your office, concerning the examination of cigar factories at Tampa, Fla., and advising that it is the custom of manufacturers to enter on their Book 73 tobacco purchased abroad as soon as they receive notice of its arrival at the custom-house and before the duties are paid, you are advised that only tobacco which is actually received at the factory must be accounted for on Book 73 and monthly return, Form 72.

To authorize a manufacturer of cigars to charge himself with tobacco which is not actually received at the factory, and which is subject to sale and constructive delivery by him to other parties while it is in the custody of the Customs Service, and which also, under certain

conditions, is subject to transfer from one port of entry to another, would be in violation of the regulations and leave the Government at the mercy of reckless and dishonest persons, who could account for more tobacco material than they had actually received at the factory. Such persons would have an opportunity to make, sell, and remove from the factory any number of cigars tax on which had not been paid. And, if allowed to take credit for tobacco they alleged they held at the customs warehouse, or public store, on the 1st day of January each year, their accounts of manufactured products would depend for accuracy entirely on their disposition to give or withhold the facts; therefore, the necessity of excluding from their accounts tobacco not actually received at the factory or withdrawn from the custom's custody.

The accounts of cigar manufacturers in Tampa and Key West should be revised at once, and all tobacco not actually at the factory should be excluded from Record 73, even though every manufacturer in your district should be required to file a closing inventory on Form 70*b* after making his monthly return on Form 72. To require manufacturers to file these closing inventories would necessitate, of course, your preparing special abstract statements of their accounts on Form 144 and forwarding the same, duly certified, to this office.

The office of internal revenue has nothing to do with tobacco which is in the custody of the Customs Service, the duty on which has not been paid by the owner or consignee, and while it is in the custody of the Customs Service the manufacturer will not be allowed to enter the same on his book, Form 73, as having been received at the factory.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. JOSEPH E. LEE, *Collector Internal Revenue, Jacksonville, Fla.*

(21451.)

Sale of merchantable cut, granulated, or scrap tobacco.

A qualified manufacturer of tobacco is not permitted to sell cut or granulated tobacco in bulk as material, and without payment of tax, to another manufacturer, although the latter may intend to properly pack and stamp it as required by the statute.—Manufactured tobacco, whether cut, granulated, or scraps, the process or manufacture of which has been completed, is not subject to sale and transfer by one manufacturer to another, but must be properly packed, labeled, and stamped before removal from the place of manufacture.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 27, 1899.

SIR: This office has received a letter, dated 20th instant, from Messrs. Reed & Regester, at 130 Fulton street, New York City, in

which they state that they are about to take out a license for a tobacco factory, and ask if they would be permitted to buy different tobacco from various factories, *already cut but not packed*, whereby they could blend their own mixtures and put them in statutory packages. They also state that they are already aware that they can purchase Havana scraps and put it up in statutory packages. They ask to be furnished a copy of the regulations appertaining to the steps necessary to be taken by them to qualify as manufacturers of tobacco. They have been referred to you.

You are advised that a manufacturer of tobacco is not permitted to sell cut or granulated tobacco in bulk, as material, and without payment of tax, to another manufacturer, although the latter may intend to properly pack and stamp it as required by the statutes.

All cut and granulated tobacco which is merchantable as a manufactured cut or smoking tobacco is subject to tax in the hands of the manufacturer, and he is not allowed to dispose of merchantable manufactured tobacco to another manufacturer of tobacco under a special permit.

One manufacturer may, under a special permit, sell to another manufacturer refuse scraps, fine-cut shorts, the refuse of fine-cut chewing tobacco, clippings, cuttings, and sweeping of tobacco; and only these classes or kinds of material can properly be transferred from one manufacturer to another.

Manufactured tobacco, whether cut, granulated, or scraps, the process or manufacture of which has been completed, is not subject to sale and transfer by one manufacturer to another, but must be properly packed, labeled, and stamped before it is removed from the place of manufacture.

The office calls your especial attention to these rulings for the reason that in your district, and the Third district of New York, there are a number of persons who have qualified as manufacturers of tobacco for the sole purpose of buying and selling scraps, cuttings, clippings, waste, and sweepings of tobacco under the statute, and the office has reason to believe that they are using cutting machines and cleaning machines, and assort, size, and clean their tobacco in such manner that it has become a cut or granulated tobacco, the process or manufacture of which has been completed, and which products are not, under the statute, subject to transfer to other manufacturers, and they are required to properly pack, label, and stamp the same before removal from the place of manufacture.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. CHAS. H. TREAT, *Collector Second District, New York, N. Y.*

(21518.)

Sale of tobacco stems.

Manufacturers of tobacco or cigars may sell tobacco stems in their natural condition to other manufacturers, to qualified dealers in leaf tobacco, or to persons who buy tobacco stems in their natural condition exclusively for export, the purchaser of the stems not being required to qualify as a manufacturer of tobacco nor to export in bond the stems purchased from manufacturers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 16, 1899.

Mr. E. T. FRANKS, *Collector Second District, Owensboro, Ky.*

SIR: This office has received your letter, dated 11th instant, inclosing one dated the 10th from Messrs. Smith & Scott, manufacturers of tobacco at Paducah, Ky., in which they urge that the present regulations relating to the sale of tobacco stems in their natural condition may be so modified as to permit their sale by manufacturers of tobacco to qualified dealers in leaf tobacco or to persons who purchase tobacco stems exclusively for export, the purchasers of such tobacco stems to be relieved from the regulation which requires them to qualify as manufacturers of tobacco and export their stems in bond.

This subject has recently been carefully considered by the office with a view of removing the restrictions placed upon the sale of stems by manufacturers of tobacco or cigars and giving them advantages extended to leaf dealers who stem their tobacco. The office is now disposed to remove the restriction, and hereafter manufacturers of tobacco or cigars will be privileged to sell their tobacco stems in their natural condition to either one of the three classes of persons herein mentioned, to wit: First, to other qualified manufacturers of tobacco or cigars; second, to qualified dealers in leaf tobacco; and, third, to persons who buy the tobacco stems in their natural condition, in packages, exclusively for export.

The manufacturer desiring to sell his tobacco stems will be required to procure a special permit from the collector of his district authorizing the sale, and in making such application the manufacturer will state the actual quantity of tobacco stems which he desires to sell and the business and name of the person to whom he desires to sell the same, if not a manufacturer of tobacco or cigars; and if a manufacturer of tobacco, rule 2 of the regulations, series 7, No. 8, revised August 27, 1898, page 7, will be observed.

Tobacco stems intended to be sold to persons other than duly registered dealers in leaf tobacco or duly registered manufacturers of tobacco, snuff, or cigars, or to persons who purchase tobacco stems exclusively for export, must first be rendered unfit for use as material in making smoking tobacco or snuff by admixture with ashes, sulphur, lime, bone dust, or other similar articles, as now provided by

regulations, after which the stems may be sold to persons who desire to reduce the same to fertilizers, insecticides, or sheep wash.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,

Approved:

Acting Commissioner.

L. J. GAGE, *Secretary.*

(21520.)

Leaf tobacco returned to dealer.

Dealers in leaf tobacco required to make entry in red ink on debit side of Book 59 of tobacco returned, and, after checking, the collector will omit reporting the sale on abstracts, Form 434 or 435.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 19, 1899.

SIR: Your abstract on Form 434, reporting sales of leaf tobacco to nonresident manufacturers of tobacco or cigars during the quarter ended March 31, 1899, shows a sale on January 3, 1899, of 294 pounds of leaf tobacco by N. Guenther to Chas. H. Seaman, a manufacturer of cigars in the Seventh district of Indiana.

This tobacco was not taken up in the accounts of the manufacturer, and Collector Henry has sent to this office an affidavit of this purchaser in which he states that he received the tobacco on January 6 and returned it to the seller on January 7, 1899.

This tobacco, when returned, should have been entered with the receipts of leaf tobacco in N. Guenther's Book 59 on the date it was received. Dealers in leaf tobacco, when tobacco is returned to them, should make an entry *in red ink* on the debit side of Book 59, showing the date and quantity of tobacco returned, the name of the person returning the same, and using the word "returned." This would balance the first entry showing sale, the red ink entry would at once call the collector's attention to the case, and the accounts could be checked and the sale omitted from abstracts, Form 434 or 435.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,

Acting Commissioner.

Mr. BERNHARD BETTMANN,

Collector First District, Cincinnati, Ohio.

(21561.)

Special-tax liabilities—Basis for computation.

Dealers in leaf tobacco may transfer leaf tobacco to themselves as manufacturers of cigars and such transfers will not be taken into account in estimating the liability to special taxes.—Such transactions do not constitute sales within the meaning of the statute.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., September 1, 1899.

SIR: Replying to your letter dated 29th instant, inclosing one from J. R. Bricker & Co., dealers in leaf tobacco, and also cigar makers,

relative to the payment of special tax as dealers in leaf tobacco, you are advised that notwithstanding their records may show they sold 128,219 pounds of leaf tobacco during the last fiscal year, if you find that they transferred all of this tobacco to themselves as cigar makers, except 37,948 pounds sold to outside parties, this last account should be taken as a basis for the computation of the tax. Having sold less than 50,000 pounds, they would incur liability to special tax, for the present year, at the minimum rate, \$6.

It appears that the larger portion of their leaf tobacco is purchased for subsequent use by them at their factory; and where they transfer leaf tobacco to themselves, as cigar makers, from themselves, as dealers in leaf tobacco, such transaction does not constitute a sale within the meaning of the statute. And, so far as such transactions are concerned, such transfers should not be taken into account in estimating the liability to special taxes.

Transactions of this character are to be encouraged rather than discouraged, and, under the rule, manufacturers will have an opportunity to store their surplus stocks of leaf tobacco outside of their factory premises. In such cases, the tobacco would be properly accounted for on their books as leaf dealers until the same was actually transferred to the factory, a condition which is more satisfactory than to authorize outside storage by manufacturers.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. H. L. HERSHEY, *Collector Ninth District, Lancaster, Pa.*

WAREHOUSE RECEIPTS.

(See also DECISIONS 20914, p. 21; 21044, p. 90; 21524, p. 317.)

(20484.)

Stamps on warehouse receipts.

Opinion of the honorable Attorney-General on the question of the proper construction to be put upon the clause of Schedule A of the war-revenue act relative to stamps upon warehouse receipts.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 3, 1899.

The appended opinion of the honorable Attorney-General is hereby promulgated for the information and guidance of all officers of the Internal-Revenue Service.

N. B. SCOTT, *Commissioner.*

DEPARTMENT OF JUSTICE,
Washington, D. C., December 29, 1898.

THE SECRETARY OF THE TREASURY.

SIR: I have the honor to acknowledge the receipt of yours of the 29th of October, 1898, inclosing copy of letter from the Commissioner of Internal Revenue, in which you ask my opinion as to the proper construction to be put upon the clause of Schedule A of the war-revenue act relating to stamps upon warehouse receipts. The clause referred to is as follows:

“Warehouse receipt for any goods, merchandise, or property of any kind held on storage in any public or private warehouse or yard, except receipts for agricultural products deposited by the actual grower thereof in the regular course of trade for sale, twenty-five cents.”

Omitting the portion of this statute excepting from its operation receipts for agricultural products deposited by the actual grower thereof in the regular course of trade for sale, it is a reproduction of a like provision in the revenue act of July 1, 1862. (See 12 Stat. L., Ch. 119, Schedule B, p. 483.)

The construction placed upon this clause of the statute of 1862 is found in Boutwell's Manual of the U. S. Tax System, p. 340, ruling No. 241, and it is held that—

“All receipts for grain or other property of any kind on storage in any public or private warehouse or yard, are ‘warehouse receipts’ within the meaning of the excise law, and are each subject to a stamp duty of twenty-five cents, without regard to the quantity specified, or the time for which the property is stored.”

I concur in this construction of the former law, and, the language of the statute now under consideration being the same as that contained in the former law, I adopt it as the proper interpretation of the provision of the act of 1898 above quoted.

The contention made in the brief filed by the representative of the warehousemen that, in order to be taxable, a receipt given for goods, merchandise, or property held on storage in a warehouse must be a negotiable paper is, in my opinion, untenable. A receipt is a writing acknowledging the taking of money or goods, and may or may not be negotiable, as the party by whom it is given may choose to make it, or local laws may provide; but, whatever its character in this respect, it is still a receipt, and a receipt given for goods, merchandise, or property held on storage in a warehouse is a warehouse receipt. A warehouse receipt is nothing more nor less than the written statement of the warehouseman that certain goods, merchandise, or property are deposited in his warehouse and held on storage for some particular person or persons. It is the written evidence of the storage of the property. This is the paper or instrument which, in my opinion, it is the intention of the law to tax, and I think such intention is plainly and unequivocally expressed in the language of the law.

I, therefore, advise you that all receipts given for goods, merchandise, or property held on storage in a warehouse require the stamp provided for by the clause of the war-revenue act above recited.

Respectfully, yours,

JAMES E. BOYD,
Assistant Attorney-General.

Approved:

JOHN W. GRIGGS, *Attorney-General.*

(20646.)

Stamp tax—Warehouse receipts.

The elements necessary to constitute a taxable warehouse receipt.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., January 27, 1899.

SIR: This office is in receipt of your letter of January 10, 1899, and in replying to this letter, your letters of October 20, 1898, and October 28, 1898, are answered. These latter letters were held in abeyance pending the opinion of the Attorney-General in regard to the question of warehouse receipts, which has now been rendered.

You state that in the last paragraph of the Attorney-General's decision, No. 20484 (page 268), of December 29, 1898, regarding warehouse receipts, he states: "I therefore advise you that all receipts given for goods, merchandise, or property, held at storage in a warehouse, require a stamp provided for by the clause of the war-revenue act above recited." And, further, you state that the attorneys for the warehousemen contend that no stamp tax is due where no receipts are given for goods or merchandise so stored, and that they place great stress on the word "given."

This word does appear in the Attorney-General's decision, but it is not a governing word. The paragraph relating to warehouse receipts does not state that the warehouseman must "give" a receipt, nor does this office believe that any court would so construe the paragraph as to require the manual giving by the warehouseman of a receipt to the storer.

This office is of the opinion, and so holds, and so has held both before the rendering of the Attorney-General's opinion and after the rendering of the same, that any written instrument in the hands of the storer or his agent, which evidences the storage of goods, merchandise, or property of any kind, held on storage on any public or private warehouse or yard, except receipts for agricultural products deposited by the actual grower thereof in the regular course of trade for sale, to be a warehouse receipt if it has upon it any acknowledgment of the warehouseman that the goods mentioned therein are on storage in his warehouse. This office does not consider that the warehouseman must "give" this instrument. If the storer presents it and it does not go out of his hands and is only O. K.'d or approved by the warehouseman or any one acting for him, that such person, in O. K.-ing or acknowledging the storage of the goods, has become the issuer of a warehouse receipt just as much as though he wrote every word upon it. The act of acknowledging the storage, together with the effect of the instrument in the hands of the storer, makes it in law and in equity a warehouse receipt.

The written instrument should have at least four elements embodied in it. First, the fact must appear that goods, merchandise, or property are being dealt with. Second, that they are being dealt with in regard to storage, directly or indirectly. Third, there must appear some acknowledgment or receipt of the goods, merchandise, or property received for storage. This acknowledgment or receipt should be made by the warehouseman *in propria persona*, or by some one by such person authorized. Fourth, some one must appear as the storer of the goods, either as the owner of same or the agent of said owner; and whenever these four facts appear this office is of the opinion, and so holds, that this instrument is subject to a tax of 25 cents, regardless of the ingenious arguments made by interested warehousemen against such a construction of the paragraph. * * *

You are further advised that nothing herein contained has reference to the question of receipts issued for storage of perishable articles. * * *

Respectfully, yours,
Mr. CHAS. H. TREAT,
Collector Second District, New York, N. Y.

N. B. SCOTT, *Commissioner.*

(20883.)

Stamp tax—Warehouse receipts.

Where cotton has been received for compression and handling and remains longer than the allotted time, no tax as a warehouse receipt accrues on the bill presented for the charges for storage.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 20, 1899.

GENTLEMEN: This office is in receipt of your letter of March 2, 1899, written in reference to the question of taxation of a bill presented for storage charges to a person owning cotton on which a charge for storage has accrued by reason of the cotton having remained over a certain allotted time in your warehouse.

It appears from the large amount of correspondence received by this office that in a great number of cases the cotton business is transacted as follows:

Eliminating the question of whether the cotton is shipped by the actual grower or by any other person, the cotton is principally received for compression and handling under an agreement with the shipper that if the cotton remains longer than a certain period a storage charge will be made. Under these circumstances, a receipt is given to the shipper in which is described the amount of cotton and its marks, and also the price charged for compression and handling. Up to this time

no storage charge is made, nor is the cotton received with the prospect of its remaining for such a time as will render it subject to a storage charge. Under these circumstances, the receipt given to the shipper for the cotton which has been received for compression and handling is not subject to taxation as a warehouse receipt because no charge for storage is made, nor is it considered by the parties to the transaction as a storage. If, however, the cotton remains longer than the allotted period for which it has been received for compression and handling and a storage charge accrues, there is no taxation imposed under the paragraph relating to warehouse receipts for the reason that no instrument is issued after the accruing of the storage that is representative of a warehouse receipt. If a bill is rendered which is operative as a receipt for the amount due for storage, this office does not consider that this instrument can be subjected to the tax imposed upon warehouse receipts.

When transactions in regard to cotton occur as above stated it is held by this office that the instruments referred to are not operative as warehouse receipts, for none of them were given as, nor do they represent, evidences of a storage. The first one is given as a receipt for compression and handling; the second instrument is simply operative as a bill and receipt for money paid for storage on an article remaining longer than an allotted time, and as no document has been issued which is operative as a warehouse receipt, this office holds that no taxation accrues.

Respectfully, yours, G. W. WILSON, *Commissioner*.
Messrs. SMITH & ETHERIDGE, *Jackson, Ga.*

(21079.)

Stamp tax—Warehouse receipts.

When dray tickets evidencing a storage are taxable as warehouse receipts and when not taxable.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 2, 1899.

SIR: This office is in receipt of your letter of April 15, 1899, in which you inclose a statement from Mr. T. S. McPheeters, of the McPheeters Warehouse Company, of St. Louis, Mo., under date of April 12, 1899, to Mr. W. T. Robinson, president of the Warehousemen's Association, and a copy of the reply of President Robinson to this communication. This correspondence relates to the question of taxation on dray tickets as warehouse receipts.

On March 2, 1899, this office instructed Collector Grenner, of St. Louis, Mo., on this subject, and the ruling made to that gentleman

answers all of the situations presented in the correspondence of Mr. McPheeters. The following is a copy of the letter:

This office is in receipt of your letter of February 21, 1899, in which you inclose a letter from the Cupples Station Warehouse Company, of St. Louis, Mo., bearing date of February 17, 1899. This correspondence is in reference to the method of issuing warehouse receipts and the liability to tax, and you state that this question affects many lines of trade in St. Louis.

Owing to the importance of this subject, your propositions are hereby stated at length, in order that the difference between them may be clearly seen and the application of the law more definitely defined.

"1. A says to the warehouse company: 'I want to store 25,000 kegs of nails with you, but they can not all be sent to you at one time.' The warehouse company and A do not enter into a written contract, but only have a verbal agreement. These nails are delivered in car-load lots or more day by day, and a receipt is given to A by the warehouse company for each separate shipment. This receipt they call a dray ticket. None of these dray tickets are stamped, but when the shipment of 25,000 kegs has been completed the tickets are called in, and a single warehouse receipt is issued to A, covering the total number of kegs stored."

Your question is, "Shall each of these shipments be considered a separate and distinct consignment, and, therefore, each so-called ticket be stamped?"

You are informed that, if this company and A have an understanding that a certain amount of goods are to be stored, this office considers that the storage is but one consignment, although it may require several days in its delivery, and in pursuance thereof there may be given a number of dray tickets.

Whether or not the number of deliveries are but one consignment is the question of fact to be determined in each particular instance. From your statement of facts, hereinbefore quoted, this office considers these several deliveries of kegs of nails to be but one consignment, because a verbal understanding was entered into between the parties to the transaction, to the effect that a storage was to be made of 25,000 kegs of nails. Therefore, these dray tickets in this instance are simply operative as evidence of the receipt of each separate delivery in the one consignment, which is finally covered by one warehouse receipt, and this office informs you that the taxation accruing in this transaction is based upon the final warehouse receipt delivered, and that a 25-cent stamp duly affixed and canceled fully satisfies the requirements of the statute.

Your second proposition is in regard to the storage of dry goods, wherein a number of shipments or consignments are made, and at the end of each month a warehouse receipt is issued covering the storages made during that period, and you ask, "Is the statute complied with in this respect?"

You are informed that it is not. Under the ruling made to you above, these several deliveries of dry goods may or may not be separate consignments.

This office is of the opinion, from the brief statement of facts, that more than one consignment has been made, as you say that the dry goods merchant does not know the amount of goods he will store during the month. Therefore, each delivery of goods to the warehouse is a separate consignment in fact and in law, and if dray receipts are

given in this instance for each consignment of dry goods, similar to the ones given in the storage of the nails, they should each be stamped with a 25-cent stamp, because the conditions governing the storage are entirely different, and each receipt represents a separate storage and a separate consignment.

You are further informed that if a storer delivers a consignment of goods to a warehouseman, and is content to rest his storage upon a verbal understanding, there are no provisions of the law compelling a written instrument to be given evidencing the receipt of the goods. The requirements necessary to constitute a taxable warehouse receipt are fully set forth in Treasury decision 20646 (page 270), and if no such instrument is issued, no tax accrues on the transaction. This is a documentary tax, and if no document is issued, the parties resting their rights on verbal understandings, no tax accrues to the Government under these conditions.

You will, therefore, see that the dray ticket as used by the McPheeters Warehouse Company may or may not be subject to taxation as a warehouse receipt, according to the circumstances attending each consignment of goods which they receive for storage, said consignment or delivery being evidenced by the dray ticket referred to.

Respectfully, yours,

G. W. WILSON, *Commissioner.*

Mr. PERCY THOMPSON,

Secretary American Warehousemen's Association,

New York, N. Y.

(21110.)

Stamp tax—Warehouse receipts.

Instruments evidencing storage of furs taxable as warehouse receipts; also taxable as fire insurance policies when a fire insurance risk is covered by the instrument.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., May 10, 1899.

SIR: This office is in receipt of a letter from Messrs. Asch & Jaeckel, 37 Union Square, New York City, bearing date of May 6, 1899, in which they inclose an instrument evidencing the storage of furs, and they ask if any documentary tax accrues upon said instrument.

Please inform Messrs. Asch & Jaeckel that this instrument is subject to a tax of 25 cents as a warehouse receipt, because it is an instrument evidencing the fact that goods are held on storage.

There is another feature connected with this instrument which also subjects it to taxation. It is this: The goods or furs which are placed on storage are also insured against loss by fire or moth, and, therefore, the instrument comes within the purview of the paragraph in Schedule A relating to fire insurance, and it should be stamped under this paragraph at the rate of one-half of 1 cent for each dollar, or fractional part thereof, of the premium charged for the insurance. This

tax accrues in addition to the taxation accruing upon the instrument by reason of its being a document that evidences the storage of goods.

In the instrument submitted by these gentlemen a gross charge is made which includes the charge for storage and the fire insurance risk. In order to stamp the instrument in compliance with the requirements of the paragraph in Schedule A relating to fire insurance, the proportionate part of the charge for the insurance should be ascertained and the tax based upon this amount.

Respectfully, yours,

G. W. WILSON, *Commissioner*.

Mr. CHAS. H. TREAT, *Collector Second District, New York, N. Y.*

(21493.)

Stamp tax—Cartman's tally ticket.

When no regular warehouse receipt has been issued in exchange for cartmen's tally tickets covering goods delivered for storage, then each tally ticket will be held to cover a separate consignment, and will require to be stamped as a warehouse receipt.

TREASURY DEPARTMENT,

OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C., August 10, 1899.

SIR: This office is in receipt of your letters of July 20 and August 2, 1899, in reference to cartmen's tally tickets issued by the Gansevoort Cold Storage Company, of New York City.

You state that it has been the practice of this company to issue these tally tickets for every load or consignment brought to their place by a cartman, regardless of the fact whether they cover an entire consignment or only a portion of one. Where this ticket is issued to cover a portion of a consignment, it is understood that the company is ready and willing to exchange the tickets when returned and issue a warehouse receipt properly stamped, but the difficulty is that only a very small portion of these tally tickets are ever returned, and it is the only evidence that the consignor has of the storage of the goods described on the tickets.

You refer to Treasury decision 21079 (page 272), in which it is stated that—

If any dray receipts are given for each consignment similar to the one given in the storage of nails, they should each be stamped with a 25-cent stamp, because the conditions covering the storage are entirely different, and each receipt represents a separate storage and a separate consignment.

You further state that you understand that storage companies are not obliged to give any receipt, as there is no provision in the law to compel them to do so, but when they do give any evidence of the fact that goods are received on storage then such evidence, regardless of the form it may take, is liable to the 25-cent stamp tax.

It is claimed by the Gansevoort Cold Storage Company that most of these tally tickets are issued for articles, such as butter, eggs, etc., received for refrigeration, but the length of time that they remain in the storage warehouse is indefinite when they are placed there, and as a matter of fact they generally remain from thirty to sixty or ninety days, and the indefinite and uncertain length of time that they are placed there for storage brings them outside of the pale of perishable goods placed there for the purpose of refrigeration.

You request an opinion relative to the liability of the tally ticket in question, and state that upon the determination of this question rests a considerable amount of stamp tax.

The following is a copy of the tally ticket referred to:

GANSEVOORT COLD STORAGE CO.,
CORNER WEST AND HORATIO STREETS, NEW YORK.
(Telephone, 1819 Spring.)

Cartman's Tally Ticket.

NEW YORK, ———, 189—.

Delivered to Gansevoort Cold Storage Co., by ——— cartman, for account of
———, the following goods: ———.
O. K. Delivered. ——— ———, *Tally Clerk.*

You are advised that the above tally ticket contains all the elements necessary to constitute a warehouse receipt, and is, therefore, subject to taxation as such. (See Treasury decision 20646, page 270.)

In the event of a duly stamped warehouse receipt having been issued covering goods delivered under one consignment, then the tally tickets issued therefor need not be stamped. However, when no regular warehouse receipt has been issued in exchange for the tally tickets, then each cartman's tally ticket will be held to cover a separate consignment, and should be stamped with a 25-cent stamp. (See Treasury decision 21079, page 272.)

You are advised that where articles sent for storage are such articles as meat, vegetables, eggs, butter, etc., and they are sent not so much for storage and safe-keeping as they are sent for preservation, there is no tax imposed upon the receipt evidencing this kind of storage. However, if such goods are sent to the storage company not so much for preservation as for storage and safe-keeping, the receipts evidencing such fact should be stamped with a 25-cent stamp.

In your letter of August 2, 1899, you state that you have discovered several warehouses which are using the same form as hereinbefore described.

You are advised that the ruling herein contained refers to all warehouse companies that use the cartmen's tally tickets, and you are directed to request of said companies a sworn statement of the number of tally tickets issued by them unstamped subsequent to July 1,

1898, which have not been exchanged for regular stamped warehouse receipts, and report same for assessment to this office.

Respectfully, yours, G. W. WILSON, *Commissioner*.

Mr. F. G. THOMPSON, *Revenue Agent, New York, N. Y.*

(21497.)

Stamp tax—Warehouse receipts.

When a warehouse receipt for grain is pledged as security for a loan, a tax accrues as a pledge, whether the pledge is made by the producer of the grain or by a dealer in grain.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 15, 1899.

SIR: This office is in receipt of your letter of August 8, 1899, in which you submit the following questions for a ruling:

A note is made for \$4,167, and described on the back of said note is a regular collateral form used by the banks in this part of the country, and there are pledged 10,000 bushels of wheat in an elevator. What amount of stamps are required?

You are advised that the collateral note should be stamped as a pledge and not as a note, inasmuch as the greater tax accrues on the pledge. The amount of stamps required is \$1.75.

A note is made for \$2,000, dated December, 1898, and there are pledged as collateral several land notes. How should these notes and collateral be stamped?

You are advised that the note for \$2,000, dated December, 1898, should be stamped to the amount of 40 cents and the pledge of collateral securing said note should be stamped to the amount of 50 cents.

A producer of grain deposits his wheat with an elevator, takes their warehouse receipt, brings it to us to use as collateral for money he wants advanced him; can he be distinguished as a producer wanting to borrow, different than a regular grain dealer who buys, stores, and borrows with same kind of receipts?

You are advised that when a warehouse receipt is pledged as security to a loan a tax accrues as a pledge when the amount secured is in excess of \$1,000, and it makes no difference whether the producer of the grain or a dealer in grain pledges the warehouse receipt.

Respectfully, yours,

ROBT. WILLIAMS, Jr.,
Acting Commissioner.

Mr. J. H. FAIRCLOTH,
Cashier Commercial Bank, Union City, Tenn.

(21558.)

Stamp tax—Warehouse receipts.

Books, household furniture, pictures, statuary, and wearing apparel not considered as "valuables;" and when safe-deposit or other companies receive such articles on deposit for hire, the receipts issued therefor must be stamped as warehouse receipts.—The word "valuables" as used in paragraph 159, Circular 503, revised, defined.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 30, 1899.

SIR: This office is in receipt of your letter of August 16, 1899, relative to the taxability as warehouse receipts of the receipts issued by various safe-deposit companies.

You state that these companies have issued receipts for every sort of valuables and wearing apparel, with the exception of large, bulky household effects, but have not been stamping such receipts, claiming the same to be exempt under paragraph 159 of Circular 503, revised, which is as follows:

Receipts given by a safe-deposit company in renting boxes in the company's vaults are not subject to taxation, nor are receipts given by such companies merely for the safe-keeping of money or other valuables.

You state that the charges made for storage by these companies are computed upon the amount of space that the article occupies, and the valuation placed upon it by the storer or owner, said valuation being embodied in the receipt issued to the party, as well as the description of the articles stored. You call attention to the fact that the name "safe-deposit company" is rather misleading, as the articles stored are not placed in private vaults, but in large fire-proof buildings, and while said companies rent safety boxes of various sizes, the question at issue has no bearing upon that particular branch of their business.

You are advised that this office has carefully reconsidered the ruling as contained in Circular 503, revised, and rules that the word "valuables" in this connection is held to mean, in addition to money, only such articles as are generally so considered, such as bonds, stocks, and other securities, gold and silver ware and bullion, watches and jewelry, and precious stones.

Books, household furniture, pictures, statuary, and wearing apparel will not be so considered, and when safe-deposit or other companies receive such articles on deposit for hire they will be considered as held on storage, and the receipts issued therefor must be stamped with a 25-cent stamp, the same as warehouse receipts.

In reporting safe-deposit and other companies for assessment, you will be governed by the above definition of the word "valuables."

Respectfully, yours,

ROBT. WILLIAMS, Jr.,

Acting Commissioner

Mr. F. G. THOMPSON, *Revenue Agent, New York, N. Y.*

(21783.)

Stamp tax—Warehouse receipts.

Goods placed in cold storage for thirty days or more *prima facie* held for storage, and not primarily for preservation.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., November 21, 1899.

SIR: I have to acknowledge the receipt of your letter of the 21st ultimo, in which you ask for a more specific ruling in regard to the question of stamping warehouse receipts issued for storage of perishable articles, or articles put up in cold storage.

This office held early in the period when Schedule A began to be enforced that where the storage of perishable articles, or articles that it was thought necessary to place in cold storage, was from day to day, and merely for preservation and safety, the receipt given for such articles is not a warehouse receipt; but if the warehouseman receives such goods in a considerable quantity, to be held for some length of time, then storage would be regarded as the principal matter, and the receipt would be liable to tax as a warehouse receipt. This ruling has not been changed, and its observance involves the exercise of sound discretion on the part of the local officers.

It is very difficult to make an inflexible time limit in such cases. I will say, however, that I should consider articles deposited in cold storage warehouse for thirty days or more as *prima facie* liable to tax as goods held for storage, and not primarily for preservation.

A cogent reason must be submitted to the collector to induce him to grant a longer period for storage than thirty days in such cases without requiring tax on the warehouse receipt.

Respectfully, yours,

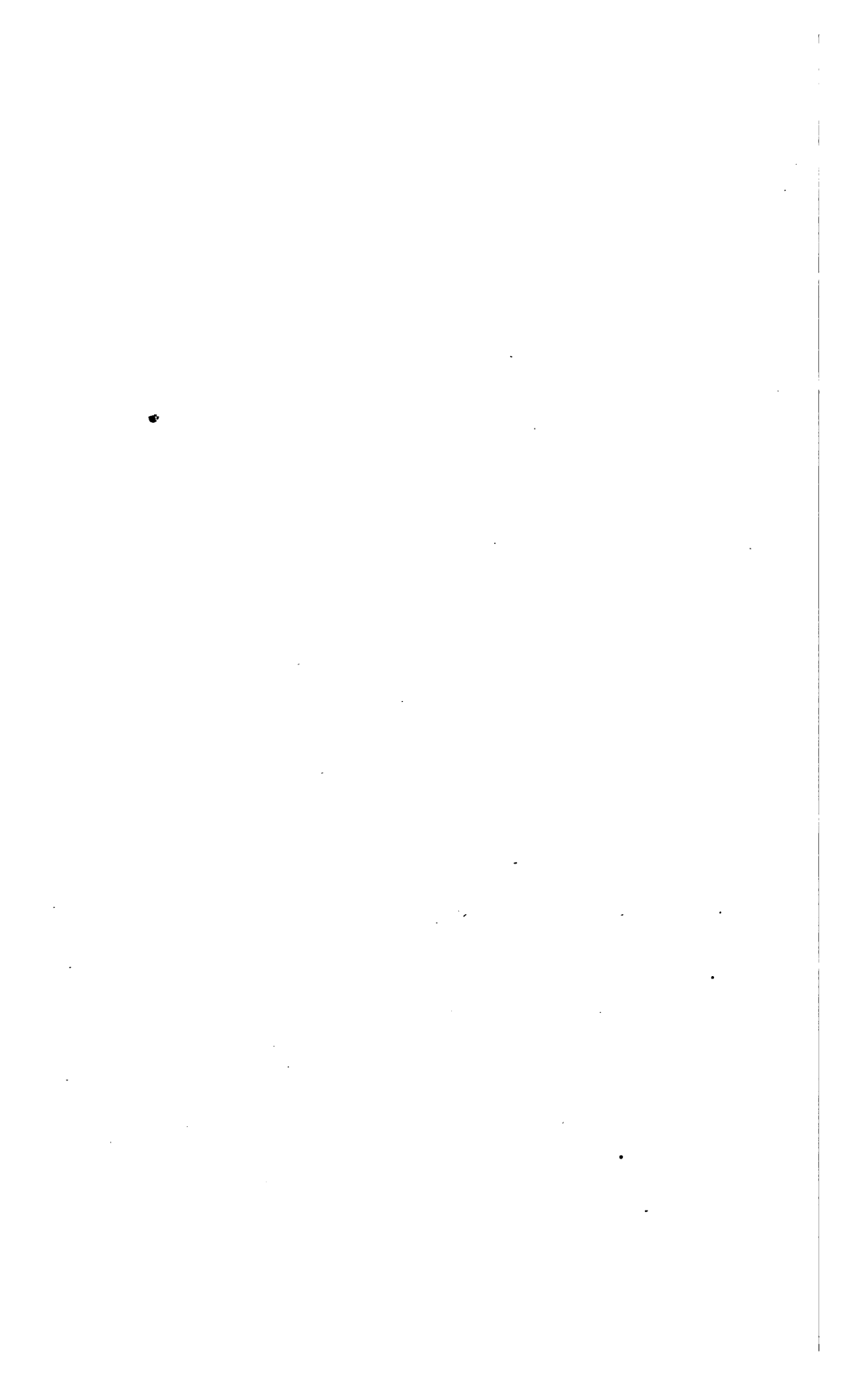
G. W. WILSON, *Commissioner.*

Mr. F. E. COYNE, *Collector Internal Revenue, Chicago, Ill.*

WINES.

(See LIQUORS.)

APPENDIX.



DIGEST OF RULINGS UNDER SCHEDULE A, ACT OF JUNE 13, 1898.

Documentary stamp taxes.

[Internal-Revenue Circular 508—second revision.]

TREASURY DEPARTMENT, OFFICE OF COMMISSIONER OF INTERNAL REVENUE,

January 9, 1900.

Following is a summary of the provisions of the act of June 13, 1898, relative to the stamp tax accruing on instruments, papers, and documents on and after July 1, 1898, enumerated under Schedule A, with the principal rulings thereon to this date:

Stamp duties on and after July 1, 1898.

SCHEDULE A.—*Documentary.*

Bonds, debentures, or certificates of indebtedness of any association, company, or corporation, on each \$100 of face value or fraction thereof.....	\$0.05
Bond, indemnifying, etc., and all other bonds of any description, except those required in legal proceedings, not otherwise provided for.....	.50
On each original issue of certificates of stock, whether on organization or reorganization, on each \$100 of face value or fraction thereof.....	.05
On all sales, agreements to sell, memoranda of sales, deliveries or transfers of shares, or certificates of stock of any association or corporation, on each \$100 of face value or fraction thereof.....	.02
Upon each sale, agreement to sell, or agreement of sale of any products or merchandise at any exchange or board of trade, or other similar place, either for present or future delivery, for each \$100 in value of said sale ..	.01
And for each \$100, or fractional part thereof in excess of \$100.....	.01
Bank check, draft, certificate of deposit not drawing interest, or order for the payment of any sum of money drawn upon or issued by any bank, trust company, or any person or persons, companies, or corporations, at sight or on demand.....	.02
Bill of exchange (inland), draft, certificate of deposit drawing interest, or order for payment of any sum of money otherwise than at sight or on demand, or any promissory note, except bank notes issued for circulation, and for each renewal of same, for a sum not exceeding \$100.....	.02
And for each additional \$100, or fractional part thereof in excess of \$100... (This clause applies to money orders issued by the Government.)	.02
Bill of exchange (foreign), or letter of credit (including orders by telegraph, or otherwise, issued by express or other companies, or any person or persons), drawn in, but payable out of, the United States, drawn singly or otherwise than in sets of three or more, for not exceeding \$100.....	.04
And for each additional \$100, or fractional part thereof in excess of \$100....	.04
If drawn in sets of two or more, for every bill of each set for a sum not exceeding \$100, or its equivalent in foreign currency, value fixed by the United States standard.....	.02
For each additional \$100, or fractional part thereof in excess of \$10002
Bills of lading or receipt (other than charter party), for goods, etc., to be exported10
Bills of lading, manifests, etc., issued by express companies, or public carriers, etc., a stamp to each, and to each duplicate thereof, of the value of ..	.01

Certificates of profits, or certificates or memoranda showing interest in the property or accumulations of any association, company, or corporation, and all transfers thereof, on each \$100 of face value or fraction thereof	\$.02
Certificate of damage or otherwise, and all other certificates or documents issued by port warden or marine surveyor	.25
Certificates of any description required by law not otherwise specified in act.	.10
Charter party, contract, or agreement for the charter of any ship, vessel, or steamer, or any renewal or transfer thereof, for every ship not exceeding 300 tonnage	8.00
More than 300 and not exceeding 600 tonnage	5.00
More than 600 tonnage	10.00
Contract, broker's note, or memoranda of sale of goods, or merchandise, stock, bonds, exchange, notes of hand, real estate, or property of any kind, issued by brokers, etc., for each note or memorandum of sale not otherwise provided for in act	.10
Conveyance deed, instrument or writing conveying lands, tenements, or other realty, etc., value over \$100 and not exceeding \$500	.50
For each additional \$500 or fraction thereof	.50
Dispatch, telegraphic, on each message	.01
Entry of goods, wares, and merchandise in custom-house, not exceeding \$100 in value	.25
Exceeding \$100 and not exceeding \$500	.50
Exceeding \$500 in value	1.00
Entry for withdrawal of goods or merchandise from customs bonded warehouse	.50
Insurance, life, on every policy, except any fraternal beneficiary society or order, for each \$100 or fractional part thereof on the amount insured	.08
Industrial or weekly payment plan, the tax is 40 per centum of the amount of the first weekly premium, as to which sworn statement is required to be made to the collector of the total amount of first weekly premiums received on policies issued during preceding month.	
Insurance, marine, inland, and fire (except purely cooperative or mutual), on each policy, or renewal, on amount of premium charged on each \$1 or fractional part	.00½
Insurance, casualty, fidelity, and guarantee, on each policy, on each \$1 or fractional part thereof of premium received	.00½
(Every assignment or transfer of all policies of insurance subject to tax. See paragraph relating to mortgages.)	
Lease, agreement, memorandum, or contract for the hire, use, or rent of land or tenement, not exceeding one year	.25
Exceeding one year and not exceeding three years	.50
If exceeding three years	1.00
(Every assignment or transfer subject to tax. See paragraph relating to mortgages.)	
Manifest for custom-house entry or clearance of cargo of any ship, vessel, or steamer for a foreign port, registered tonnage not exceeding 300 tons	1.00
Exceeding 300 tons and not exceeding 600 tons	3.00
Exceeding 600 tons	5.00
(Does not apply to vessels plying between ports of United States and ports in British North America.)	
Mortgage of lands, estate, or property, real or personal, heritable or movable, made as security for payment of definite sum of money, also any conveyance of lands, estate, or property whatsoever, as security, exceeding \$1,000 and not more than \$1,500	.25
On each \$500 or fractional part in excess of \$1,500	.25
(Same as above in all assignments or transfers.)	
Passage tickets by any vessel from the United States to a foreign port, costing not exceeding \$30	1.00
More than \$30 and not exceeding \$60	3.00
More than \$60	5.00
Power of attorney or proxy for voting at an election for officers of any incorporated company or association, except religious, charitable, literary, or public cemeteries	.10
Power of attorney to sell and convey real estate or to rent or lease the same, to collect or receive rent, to sell or transfer stock, bonds, etc.	.25
(Papers used in the collection of pension, back pay, or bounty claims, or claims for property lost in military or naval service are exempt.)	
Protest: Upon the protest of every note, bill of exchange, acceptance, check, or draft, or any marine protest	.25

Pledge of lands, estate, or property, real or personal, heritable or movable, made as security for payment of definite sum of money, also any conveyance of lands, estate, or property whatsoever, as security, exceeding \$1,000 and not more than \$1,500	\$0.25
On each \$500 or fractional part in excess of \$1,50025
(Same as above in all assignments or transfers.)	
Every renewal or continuance of any agreement, contract, or charter by letter or otherwise, same stamp duty paid as that imposed on the original instrument.	
Sleeping car, berths in, or seats in palace or parlor cars: On every berth and on every seat sold01
(Not included in Schedule A, but see Sec. 28 of same act.)	
Telephone messages: Every person, firm, or corporation operating any telephone line or lines is required to make, within the first fifteen days of each month, a sworn statement to the collector of the number of messages or conversations transmitted over their lines during preceding month for which a charge of 15 cents or more was imposed, and for each of such messages or conversations to pay a tax of01
Warehouse receipt for goods, merchandise, or property held on storage, except agricultural products deposited by actual grower25

ULINGS.

Administration, letters of.

1. Letters of administration, testamentary, guardianship, and the like do not require stamps. Petitions for appointment of administrators, executors, or guardians require no stamp.

Affidavits.

2. No stamp is required on affidavits.

Bill of sale of a vessel.

3. There is no tax upon the bill of sale of a vessel. A mortgage of a vessel requires a stamp as a mortgage of personal property.

Bill of sale.

4. When a bill of sale of any kind requires a certificate of acknowledgment in order to be recorded, a 10-cent stamp must be affixed. There is no tax on a bill of sale as such; if it acts as a pledge of personal property, there is a tax as a pledge.

Bills of lading.

5. In case of *export* bills of lading issued in sets of two or more, the bill retained by the consignor must be stamped, and a notation made on the other bills of the same set, giving number of bills issued covering the same shipment, and a statement that the bill retained by the consignor has been duly stamped.

6. On *inland* bills of lading "each duplicate" requires "a stamp of the value of 1 cent."

7. It is the duty of carriers to issue a bill of lading or receipt for goods accepted by them for shipment and to affix the stamp, and a

penalty is prescribed for failure to do so, but the law does not say who shall pay for the stamp.

8. Bills of lading for goods exported by rail from points in the United States to points in Canada or Mexico are taxable the same as inland bills of lading, namely, 1 cent. (See Opinion of Attorney-General dated January 2, 1900.)

9. No tax on bills of lading, passage tickets, or manifests issued by steamboats or other vessels plying between ports in the United States and ports in British North America.

Bonds.

10. Bonds of brewers, manufacturers of oleomargarine, manufacturers of tobacco, manufacturers of cigars, distiller's annual, distiller's warehousing, transportation and export bonds, are required to be stamped. Where these bonds are required by law to be made in duplicate or triplicate, only the original is required to be stamped. Copies of distiller's bonds forwarded to this office for office use need not be stamped.

11. Where a surety company is surety on these bonds, the tax is one-half of 1 cent on each dollar of premium in addition to the 50-cent tax on the bond. The stamp representing this amount should be placed on the original bond, and on the duplicates and triplicates a memorandum can be made stating that this tax has been paid by stamp attached to the original bond.

12. A bond filed by order of court to obtain a decree or order for the sale of real estate is a bond given in a legal proceeding, and is exempt from tax.

13. Bonds given by public officers, such as sheriffs, clerks, registers or recorders of deeds, treasurers of counties, cities, or towns, or other public officers of like character, are required to be stamped. Bonds given to city or county by liquor dealers must be stamped.

14. Mere agreements to build houses are not taxable, but if bonds are included for the faithful performance of work or contracts they are held to be subject to tax as bonds.

15. Bonds, taxable under the law and which by their own terms expire from time to time, require a 50-cent stamp every time they are renewed.

16. Marriage bond requires a stamp of 50 cents.

17. Where a bond is given with a guaranty company as surety, the bond should have, in addition to a 50-cent stamp, as required under the head of "Bond," in Schedule A, a stamp denoting one-half of 1 cent on each dollar or fractional part thereof paid by the principal obligor on the bond as a premium, under that paragraph of Schedule A relating to guaranty companies, and this tax must be paid by stamps as often as the premium is charged by the guaranty company, whether annually or otherwise.

18. Bonds "required in legal proceedings" are exempt from stamp tax. They are such as are required in litigation in either civil or criminal cases, such as prosecution bonds, injunction bonds, bonds to stay proceedings, bonds upon appeal, writs of error, bonds for costs, and the like; and in criminal cases, recognizances, bonds for appearance, bail bonds, and also bonds in criminal cases upon appeal and writs of error, supersedeas bonds, etc. Bonds given by persons appointed by the court, conditioned for the faithful performance of the duties of their office or position, such as receivers, assignees, executors, administrators, and guardians, are exempt.

19. Guarantees accompanying proposals or bids and used in lieu of bonds are taxable same as bonds.

Broker's note.

20. "Broker's note, or memorandum of sale of any goods or merchandise, stocks, bonds, exchange, notes of hand, real estate, or property of any kind or description issued by brokers or persons acting as such, for each note or memorandum of sale, *not otherwise provided for* in this act, ten cents." Sales of shares of stock are elsewhere provided for—i. e., under paragraph 1 of Schedule A—and the tax on same is 2 cents per \$100 of face value.

21. The original note or memorandum of sale is alone subject to the tax of 10 cents when made by a broker or one acting as such, and the tax is payable by said broker or one acting as such; the duplicate or the copy of the original memorandum of sale is not taxed.

22. A mere memorandum, accompanying an offer to purchase, is subject to the tax only provided the offer is accepted, and should be stamped by the broker on the acceptance of the offer.

23. A statement of account showing the receipts and disbursements in connection with a sale, and not being the contract of sale, does not require a stamp.

24. A broker's memorandum of sale of promissory notes ("notes of hand") requires the 10-cent stamp.

Bucket shops.

25. By bucket shop is meant a place other than a board of trade or exchange where no delivery of the stock or commodities, bought or sold, is ordinarily contemplated. Each stock transaction in a bucket shop must be evidenced by a written memorandum, to which must be affixed, at the opening of the trade, stamps at the rate of 2 cents per \$100 or fraction thereof of the par value of the stock; and when the trade is closed, except in the case of an "exhaust," additional stamps must be affixed at the same rate as on the opening of the transaction.

26. Where a memorandum is issued covering a transaction in grain or other merchandise made in bucket shop, a 10-cent stamp must be affixed to such memorandum.

27. No tax accrues on the closing of a stock transaction in a bucket shop caused by the margin, which the speculator has deposited, being exhausted because of the market going against the speculator, providing no settlement of differences is made between the parties to the transaction.

28. Where a broker receives an order to buy or sell stock for a customer, and wires said order to his (the broker's) correspondent located in another city, the name of the customer being undisclosed, but one tax accrues on the transaction, said tax being that accruing when the sale or purchase is made by the correspondent.

Building and loan associations.

29. The exemption granted to cooperative building and loan associations, etc., loaning money only to their own shareholders, extends to any papers or instruments (otherwise taxable) executed by such associations, or any such papers and instruments made or executed by the shareholders to the associations in dealing with the associations and within the limits of their legitimate operations, except that checks or drafts given by such associations or by the shareholders are subject to the tax.

Certificates.

30. Certificates required by law issued by any Department or officer of the Government at the request of private persons, solely for private use, should be stamped. The stamp should be furnished by the person applying for the instrument and for whose use and benefit the same is issued, and should be affixed before the document is delivered.

31. Certificates of officers of the United States, given in the discharge of official functions necessary in carrying on the machinery of the Government, are exempt.

32. Certificates issued by an officer of the State, in the interest of the State, are not liable to tax.

33. Any documents the stamping of which would make it necessary that the State should furnish and affix the stamp are held to be exempt from the stamp tax.

34. Return of birth, certificate of death, and certificates of the registrar as to the facts declared concerning birth, marriage, and death are none of them held to be subject to the stamp tax imposed upon certificates, in view of the fact that these certificates are given in pursuance of State laws for public purposes.

35. Certificates issued by the health officer of New York, under State statute, relative to the employment of children, are exempt, being issued in the discharge of a duty connected with the operations of the Government.

36. A marriage certificate, to be returned to any officer of a State,

county, city, or town, to constitute part of a public record, requires no stamp. A marriage certificate issued by the officiating clergyman or magistrate and given to the parties, if required by law, must be stamped at the rate of 10 cents.

37. A teacher's certificate issued by a county superintendent of public instruction or other officer of State, county, or municipality comes within the exemption provided by section 17 of the act, and does not require a stamp. These certificates, given under regulations adopted in connection with public schools, are held to be for governmental purposes rather than for private use.

38. A mercantile license or liquor dealer's license, required by the laws of a State or ordinance of a city in the exercise of the functions governmental, taxing, or municipal of the State or corporations, comes within the exemption.

39. Inspectors and weighers of grain, who give certificates under State laws, are not required to stamp such certificates. They are exempt under section 17.

40. No stamp is required upon certificates of the sufficiency of sureties upon bonds.

41. A stamp is required on a certificate of incorporation.

42. The certificate of a clerk of court to the qualifications of a notary public, or justice of the peace, is held to be a certificate requiring a stamp.

43. An architect's certificate requires no stamp, unless, by an indorsement, it becomes an order for the payment of money.

44. Certificates issued at tax sale or certificates of redemption from tax sale do not require stamps.

45. Certificates of "proof of loss" for use of an insurance company, being a statement made as to the facts and circumstances attending a fire, is not a certificate requiring a stamp.

46. Certificates required by law, which are made by court officers under the direction and authority of the court, and which are necessary to give proper effect to the court proceedings, are exempt.

47. Court processes, such as summonses, writs of attachment, subpoenas, warrants, orders of court, etc., are not required to be stamped.

48. Certificates of protest of every note, bill of exchange, etc., whether protested by a notary public or by any other officer duly authorized by law, must be stamped.

49. "Certificates of any description required by law not otherwise specified in this act, ten cents." The first requirement necessary to subject any given certificate thus generally described to tax is that it shall be one which is required to be given by law, national, State, or municipal. All such are taxable, except those coming within the exemption of section 17—that is to say, those which are given strictly in the exercise of the functions—governmental, taxing, or municipal—of the State or corporation.

50. Certificates given by an officer, not for public or governmental purpose, but for private interests and use, are liable to the tax, if they are given in obedience to any law which requires them to be given when called for, such as insurance certificates issued by State insurance commissioners to insurance companies or their agents.

51. A certificate of search showing that the dockets or records of a court have been searched, and showing either that liens exist or do not exist as to property, or that judgments are recorded or are not recorded, and also certificates of search to ascertain whether or not titles are good, whether taxes have been paid, and other certificates of this character are not such as are required in the general discharge of governmental functions on the part of the officers giving them, but are such as are needed for private use and private interests, and are, therefore, subject to the tax, as being required by law to be given when called for.

If the act performed or the certificate issued by the officer is in the discharge of an official function necessary in operating the general machinery of the Government, it is exempt.

52. Certificates of acknowledgment of deeds and mortgages are not required to be stamped, whether the amount involved is above or below the minimum taxable point. The memorandum on the back of a deed or mortgage, made by the register or recorder, that the instrument has been placed upon record, is not subject to taxation. It is not a certificate such as is contemplated by the law. It is a brief note on the back of the deed or mortgage citing date of filing and date and place of record.

53. A notarial certificate of acknowledgment to a satisfaction of mortgage requires a 10-cent stamp. It is the general rule that an instrument not otherwise taxable which requires a notarial certificate of acknowledgment in order to be recorded must have such certificate stamped. (But see exception as to deeds and mortgages in Ruling 52, preceding.)

54. Marriage certificates, if required by law to be given to the contracting parties, either by the clergyman or the officiating magistrate, must be stamped with a 10-cent stamp. If no law requires such a certificate to be given the contracting parties, there is no stamp required on such document if given. The license requires no stamp, either when issued or when returned to the county clerk or recorder's office for record.

Certificates of deposit.

55. Certificates of deposit drawing interest, if left a certain time, are taxable first at the rate of 2 cents, but if left until interest accrues, stamps at the rate of 2 cents per \$100 must be added.

56. Certificates of deposit payable otherwise than at sight or on demand must be stamped at the rate of 2 cents per \$100 or fraction thereof, whether they draw interest or not.

Checks, drafts, orders for the payment of money, etc.

57. Sight drafts drawn upon or issued by any bank, trust company, or any person or persons, companies or corporations, require a stamp, and, if the acceptance of the draft is accompanied by an order to the bank to pay the same and charge to the account of the drawee, this accompanying order requires, in addition, a 2-cent stamp as an order for the payment of money

58. Where a draft duly stamped is drawn by one bank on another bank, the bank receiving and paying it is not required to affix any stamp thereto.

59. When a bank charges a customer's account with the amount of a note, at its maturity, which he has given and which is made payable at that bank, no liability to stamp occurs thereby, unless some written direction is given by the maker of the note to the bank which is, in effect, an order to the bank to pay the amount of the note to the holder out of the funds of the maker of the note. Such an order would require a 2-cent stamp.

60. Checks drawn by the manager of the clearing house, to settle balances between banks, are subject to stamp as checks.

61. A receipt *personally* tendered to a bank by a depositor upon the withdrawal of funds to his credit does not require a stamp.

62. Orders for the payment of money on sight or on demand are subject to the stamp tax imposed on checks by the third paragraph of Schedule A; but on orders for the payment of money "otherwise than at sight or on demand" the stamp tax must be paid as on promissory notes.

63. An order payable or redeemable in merchandise only (and not in money) does not require the 2-cent stamp.

64. The withdrawal of funds by a depositor on the presentation of his bank book to the savings bank does not require a stamp, if there is nothing accompanying it in the form of an order for the payment of money.

65. Checks and drafts drawn in favor of public officers, such as post-masters, tax collectors, treasurers, clerks of court, and the like, are subject to taxation.

66. Tickets received at a bank and paid the same as checks are regarded as in effect orders for the payment of money.

67. An order for the payment of money, drawn by the secretary of an order or beneficiary society on its treasurer, does not require stamp if presented for payment directly to the treasurer by the party in whose favor said order is drawn; but if the order is cashed by a bank, or otherwise negotiated, and presented to the treasurer for payment by a party other than the one in whose favor it was originally drawn, it requires a 2-cent stamp.

68. A check drawn by the cashier, or some other officer of a bank,

upon the bank of which he is such officer, made payable to some person not connected with the bank, requires a stamp.

69. If a check used is simply in the nature of a memorandum, and not an order for the payment of money, but used within the bank exclusively, as a method of keeping the accounts, it is not necessary to stamp the same as a check.

70. A check drawn in this country upon a bank is subject to the same tax whether the bank upon which it is drawn is a domestic bank or a bank located in a foreign country.

71. The conveyance by express companies or other common carriers of bank bills, coin, currency, or money of any kind, as well as stock certificates, commercial paper, and other choses in action, imposes an obligation on such common carriers to issue and stamp a bill of lading or receipt for the same, it being held that such property is included within the terms "any goods accepted for transportation."

72. Money orders issued by express companies must be stamped at the rate of 2 cents for each order.

73. Foreign express money orders payable abroad, but cashed in the United States, are subject to taxation at the rate of 2 cents.

74. Orders by telegraph or otherwise for the payment or transfer of money abroad issued by express or other companies, or any person or persons, require a stamp at the rate of 4 cents for each \$100. Orders for the same purpose within the United States require a stamp of 2 cents on each order, irrespective of the amount.

75. Checks drawn by United States disbursing officers against public funds standing to their official credit in performance of duties required by law do not require a 2-cent internal revenue stamp placed thereon. And all checks drawn by officers of States, counties, and municipalities for the discharge of the obligations of States, counties, and municipalities are exempt under section 17 of the act. These checks should have an indorsement on their face showing that they are drawn against "public funds."

76. Any order for payment of money drawn in, but payable out of, the United States, if drawn singly, is subject to tax of 4 cents for \$100 or less, and for each additional \$100 or fraction, 4 cents.

77. A 2-cent stamp is required on an order for cash drawn on a merchant by one of his customers.

78. If papers in the nature of receipts are given in lieu of checks, and are used as commercial negotiable instruments, they are checks and not receipts, and are subject to tax.

79. The person who signs and issues a bank check, without affixing the proper stamp, becomes involved in liability to penalties under the act, and the unstamped check is not competent evidence in any court.

80. Where a check is presented at a bank without having the requisite stamp affixed, the bank, if it pays such unstamped check,

is liable to the penalty provided by section 10 of the act. Bank can not cure the defect by affixing stamp.

81. Tickets, which are on the face merely memoranda of money due (e. g., John Doe, June 25, 1898, \$15), and do not contain any language making them checks or orders for the payment of money or promissory notes, are not subject to tax, unless received and paid at bank the same as checks.

82. Grain, cotton, or produce tickets may be cashed by a regular employee of the company issuing same without liability to the stamp tax. They may also be cashed by any bank or third party without being stamped, providing the party issuing such tickets has deposited with said bank, or other third party, funds for the specific purpose of cashing said tickets, which funds must be kept by the bank or other third party in a box, drawer, or other receptacle, separate and distinct from any other funds in the possession of the bank or third party, and always providing said tickets are cashed directly to the parties to whom they were originally issued.

Conveyances. (See Deeds and Mortgages.)

Charter party.

83. The tax under this head is imposed only upon vessels employed in foreign trade or the whale fisheries, and does not apply to vessels employed in domestic trade and trade on the Great Lakes with Canada.

84. The copy or duplicate of a foreign-made charter party, chartering a vessel to load at a port within the United States, which is the original evidence in this country of the vessel's charter, is subject to taxation.

85. The tax under the head of "charter party" is based on the *net registered* tonnage, and not on the gross registered tonnage.

Deeds and mortgages.

86. Deeds and mortgages executed by a sheriff, in compliance with an order of the court, are subject to tax.

87. Contract for deed which does not convey and vest title, and which contains a provision for giving a deed upon compliance with the conditions in the contract, is not taxable as a conveyance of land.

88. If a deed does not grant, assign, transfer, or convey to the purchaser any lands, tenements, or other realty, but only the right to burial, to erect monuments, etc., it does not require a stamp.

89. Deeds that are simply confirmatory and do not vest title not already vested are exempt from tax. Same rule as to deeds of partition.

90. Deeds, mortgages, and similar instruments placed as "escrows" are not subject to taxation until final delivery.

91. Quitclaim deeds are subject to taxation according to the value

of the property interest conveyed; but when they are used in place of the ordinary warranty or bargain and sale deed and convey whatever title the vendor has, they are taxable same as other deeds of conveyance; it is only when they convey an outstanding interest that they are taxable to the value of said interest only.

92. The stamp tax is required to be paid on the assignment of a mortgage at the same rate as on the original instrument when there has been no reduction of the mortgage prior to the assignment. Where an assignment is made of a mortgage by a separate written instrument, and the mortgage and instrument are deposited with a trustee as security for obligations, the stamp tax must be paid on the memorandum of the pledge of these instruments at the rate fixed by the paragraph relating to mortgage or pledge.

93. Where a mortgage is deposited with a trustee as security for obligations without any assignment, but accompanied by a power of attorney, authorizing an assignment in the event of a default upon the obligations, the stamp tax is required to be paid on the pledge of the mortgage and also on the power of attorney, but not on the transfer authorized until this transfer is completed.

94. Mortgages received by a State from persons to whom State lands may be sold are subject to the stamp tax.

95. Abstracts of title do not require to be stamped.

96. Releases of mortgages, or releases of deeds of trust that operate as mortgages, are not subject to taxation as such, no matter in what form they are executed. If they require a notarial acknowledgment this is subject to a tax of 10 cents.

97. Where local laws authorize entry of satisfaction upon the record, and the mortgage is thus canceled, such entry does not require a stamp. If the mortgagee, as he has a right to do in some States, makes a power of attorney to the register or recorder or other person for the entry of satisfaction of the mortgage, stamp tax must be paid on this power of attorney.

98. On an assignment of a mortgage the tax is based on the amount remaining unpaid of the mortgage assigned. Only express assignments of mortgages are taxable, which must be in writing and signed by the assignor.

99. When real estate is conveyed subject to a mortgage, if the deed conveying the same contains any covenant or statement whereby the grantee assumes the mortgage and becomes liable thereby for a deficiency judgment in case of foreclosure, then the amount of the mortgage is to be added to the value of the equity of redemption in determining the consideration on which the stamp tax is to be based. However, if there is no covenant or statement in the deed whereby any liability of the grantee for the payment of the mortgage can be implied, then the consideration is to be based only on the value of the equity of redemption.

100. A mortgage or deed of trust given to secure bonds, which are to be issued from time to time by any company, corporation, or association, is valid so far as the stamp taxes are concerned, although no stamps are affixed thereto, if the bonds secured thereby are stamped *as issued* at the rate of 5 cents for each \$100 or fraction thereof, and it is permissible to affix the necessary stamps either to the mortgage or the deed of trust, or to the bonds as parties may elect.

101. A mortgage executed and delivered prior to July 1, 1898, is subject to stamp tax when offered for registration after that date in States only where by State law registration is necessary to establish a valid lien as between the parties. When a mortgage executed and delivered prior to July 1, 1898, established a valid lien between the parties without registration, it does not require a stamp.

102. Any conveyance or other instrument whereby the title to real property or an interest therein is conveyed from one person to another is subject to the tax, because persons who take title by conveyance such as deeds or other instruments sufficient to convey real estate are what are known in law as purchasers as contradistinguished from those who take by inheritance or operation of law.

103. The amendment of February 28, 1899, to Schedule A of the act of June 13, 1898, was as follows:

“Whenever any bond or note shall be secured by a mortgage or deed of trust, but one stamp shall be required to be placed upon such papers: *Provided*, That the stamp tax placed thereon shall be the highest rate required for said instruments or either of them.”

This amendment has been construed by the honorable Attorney-General in an opinion dated July 17, 1899, and published as Treasury decision 21400 (page 205).

In accordance with this opinion, this office has ruled in Treasury decision 21471 (page 209), dated August 7, 1899, that whenever the same mortgage secures more than one note the comparison should be made between the total tax accruing on all of the notes and the tax accruing on the mortgage, and the stamps representing the highest tax required by said instruments, or either of them, may be affixed to the notes, or the mortgage, as parties may elect.

104. The former published rulings of this office relative to real property conveyed subject to mortgage have no reference to cases where the grantee is the original mortgagor. In a deed of this kind the taxable consideration will always include the amount of the mortgage, as well as the part of the purchase price paid in cash, and the deed must be stamped accordingly. The mortgage given as part of the purchase price is taxable in itself, the same as any other mortgage, subject to the amendment of February 28, 1899. If the amount of tax accruing on the mortgage is greater than that accruing on the note secured thereby, the amount of stamp tax required is to be com-

puted according to the amount of tax due on the mortgage only, and the stamp may be applied to either instrument as parties may elect.

Express and freight receipts.

105. The shipment of bundles or packages of newspapers inclosed in one general bundle under a single bill of lading is permitted, and there will be no objection to the distribution of the contents of such a general bundle at the different stations along the line of the railroad.

106. A shipment bears but one tax, although in completing it transit by rail, boat, or other method of conveyance is required. A through export bill of lading made at an interior domestic point requires only a 10-cent stamp.

107. The stamp should be affixed to the evidence of receipt and forwarding for each shipment, whether the evidence is in the form of a bill of lading, manifest, receipt, or book, and the common carrier is compelled by law to issue this evidence of receipt and forwarding.

108. Mere local operators for the delivery of packages, baggage, and such like, within the limits of the same town or city, are not required to give bills of lading. Although such operators may give a receipt for articles to be delivered, such receipt is not required to be stamped. The carriers which were intended to be included within the terms of Schedule A, under the head of "Express and freight," are such as are engaged in the transportation of express matter and freight from one place to another in the ordinary course of commerce and trade.

Insurance policies.

109. A policy of insurance is not valid unless it bears the proper canceled revenue stamp.

110. Neither the so-called mortgage clause attached to a fire insurance policy nor its cancellation or release requires additional stamp.

111. Where a policy of life insurance is assigned as collateral security for a loan, it should be stamped as a pledge according to the amount of debt secured and not according to face of policy.

112. Concerning the payment of internal-revenue tax on premiums charged on marine, inland, or fire insurance under open policies, see Internal Revenue Circular No. 504.¹

113. All policies of insurance issued in the United States by foreign insurance companies are subject to taxation.

114. Fire insurance policy when assigned or transferred is subject to taxation in proportion to the unearned premium.

115. Industrial insurance companies who receive monthly premiums can make monthly returns under the proviso in Schedule A relating to these companies.

116. When policies of reinsurance are issued by one company to another they are not subject to taxation.

¹ Compilation of Decisions Rendered by the Commissioner of Internal Revenue under the War-Revenue Act of June 13, 1898 (January, 1899), page 333.

117. Only purely cooperative or mutual fire insurance companies, carried on by the members thereof solely for the protection of their own property and not for profit, are exempted from taxation.

118. The second proviso in the paragraph relating to life insurance in Schedule A, "that the provisions of this section shall not apply to any fraternal, beneficiary society, or order," relates only to policies of insurance referred to in that paragraph.

119. A policy does not require a stamp until it is issued as an insurance policy, and an insurance company can stamp a policy through its local agents as well as through its general agent.

120. Any agent of the company who is charged with the duty of delivering the policy to the policy holder and receiving the premium would be authorized to affix and cancel the stamp in behalf of the company.

121. A stamp must be attached to premium notes as well as to policies.

122. Annuity policies are not taxable.

123. A conditional assignment of a policy of insurance to secure a loan is not taxable as an assignment. If the conditional assignment becomes absolute upon default it is taxable.

124. Releases of conditional assignments of policies of insurance are not taxable.

125. Changes in beneficiaries in life insurance policies not taxable if the change is not made for a valuable consideration.

126. Change in plan of life insurance not taxable if no new insurance is written.

Jurat.

127. The ordinary notary's jurat is not required to be stamped; affidavits are not taxable. A jurat should not be confounded with an acknowledgment. A jurat generally consists of the following words: "Sworn and subscribed before me this — day of —."

Leases.

128. Where leases are executed in duplicate, so that both are originals, both are required to be stamped; but if there be but one original, copies thereof are not required to be stamped.

129. This office holds that where a receipt is given for money received as rent for certain premises and for a certain term, and there are no other recitals in the receipt, it does not require a stamp. If the receipt contains any phrase or clause that can be construed as a contract for the hire, use, or rent as aforesaid, in such case the receipt becomes something more than a bare receipt, and should be stamped according to its tenor and effect. A mere reference in a rent receipt to an existing lease, duly executed, will not be construed as a new lease.

130. Leases which are assigned are taxable on the basis of the term assigned.

131. Landlord and tenant agreements letting property by the month are taxable at the rate of 25 cents as leases for a less period than one year; if the tenancy continues for a longer period than one year, there is no additional tax imposed on the instrument.

132. Oil and gas lease, when reading "for a term of one, two, or three years *and as much longer as oil or gas shall be found in paying quantities,*" is subject to a tax of \$1 as a lease exceeding three years.

Manifests.

133. The manifest for custom-house entry or clearance of the cargo of any ship, or vessel, or steamer for or from a foreign port does not include ship's supplies for its voyage. It only includes those things which the ship has taken aboard for transportation.

134. Stamp duties imposed on manifests, bills of lading, and passage tickets do not apply to steamboats or other vessels plying between the ports of the United States and ports in British North America.

135. The words of the statute are "Manifest for custom-house entry or clearance of the cargo of any ship, vessel, or steamer *for* a foreign port." The word "from" appears to have been inadvertently omitted from the statute. It is not believed, however, that Congress intended to exempt from taxation entry manifests. Entry manifests relate only to ships arriving at and clearance manifests only to vessels leaving the port; and it was evidently intended by Congress to include both kinds of manifests. The paragraph is construed by the Internal-Revenue Office as though it read: "Manifest for custom-house entry of the cargo of any ship, vessel, or steamer from a foreign port, or manifest for custom-house clearance of the cargo of any ship, vessel, or steamer for a foreign port."

Notes.

136. Where notes or bonds with interest-coupon notes are given, said coupons being in the form of promissory notes, each coupon note requires a stamp in addition to the stamp placed on the principal note.

137. Interest coupons, not in the form of promissory notes, attached to bonds or notes do not require a stamp.

138. No stamp is required upon the transfer by indorsement of promissory notes.

139. Where notes secured by a deed of trust are used as collateral, the deed of trust and the notes are required to be stamped, not on the basis of their face value, but on the amount for which they are pledged (that is to say, the memorandum of their pledge must be so stamped). This pledge of notes and deed of trust does not require to be stamped

again because of renewals of the notes held as collateral if the pledge itself is not renewed.

140. Promissory notes which have matured and have been allowed to run without suit are held not to be renewed by the payment of interest. This is looked upon as a "forbearance" and not a renewal, the holder not relinquishing his right of action for any stated period. Payment of interest in advance on a matured promissory note is a renewal of the same within the meaning of the law.

141. A bond secured by mortgage given by a private person is taxable as a bond at a uniform rate of 50 cents, regardless of amount.

142. In cases of loans on real estate, where promissory notes are given, which are not paid at maturity, but on which an extension of time of payment is granted, without the taking of a new note, it is held that every such extension is a renewal of the note within the meaning of the statute, and that the requisite stamp must be affixed for every such renewal or extension. This also applies to notes discounted before July 1, falling due on or after that date.

143. An *inland bill of exchange*, within the meaning of the act, is a bill of exchange drawn and made payable anywhere in the United States.

Powers of attorney.

144. Powers of attorney executed abroad to be used in this country require a stamp.

145. Powers of attorney executed in this country for use abroad do not require a stamp.

146. Where judgment notes, so called, contain a *clause authorizing any attorney at law to confess judgment* in favor of the holder of the note, such authorization is held to be a *power of attorney*, and taxable as such in addition to the tax required on a judgment note as a promissory note.

147. Powers of attorney executed on the back of stock certificates used in connection with transfer of shares require to be stamped in addition to the tax on transfer of stock.

148. Powers of attorney to sell or transfer Government bonds are taxable.

149. Power of attorney contained in a pledge of collateral securities requires no stamp.

150. An instrument simply authorizing the secretary or other proper officer to transfer shares of stock on the books of a company is not a power of attorney.

Pledge.

151. Where certificates of stock are delivered as collateral the stock to be forfeited only upon condition of failure to pay the debt for which it is *pledged*, a stamp is required as for a pledge and not as for a sale.

152. A pledge of personal property as collateral security for a note

or bond is subject to the amendment of February 28, 1899, the same as a mortgage. But one stamp is required to be placed on such papers, but the stamp tax placed thereon must be the highest rate required for either of them. There is no tax on a pledge of personal property for \$1,000 or less.

153. Pledges of property are not held to be renewed by the renewal of the note which they secure; there must be some specific act of renewal of the pledge in order to subject it to taxation as a renewal.

154. A paper or instrument stipulating that certain securities or other property shall be held as indemnity or as a basis of credit or a guarantee generally, without specifying particular property as security for the payment of a definite and certain sum, is not liable to tax under the war-revenue act relating to pledge.

Proxy.

155. A 10-cent stamp is sufficient upon a *proxy* for use in voting at an election of officers of an incorporated company, without regard to the number of signatures.

156. Powers of attorney and proxies for the purpose of voting the stock of building and loan associations, which make loans only to their shareholders, do not require to be stamped.

Receipts.

157. Receipts given to the patrons of post-office for box rent are not taxable.

158. No stamp is required on ordinary receipts.

159. Receipts given by a safe deposit company in renting boxes in the company's vaults are not subject to tax, nor are receipts given by such companies merely for the safe-keeping of money and valuables.

The word "valuables" in this connection is held to mean, in addition to money, only such articles as are generally so considered, such as bonds, stocks and other securities, gold and silver ware and bullion, watches and jewelry, and precious stones.

Books, household furniture, statuary, and wearing apparel will not be so considered, and when safe deposit or other companies receive such articles on deposit for hire they will be considered as held on storage, and the receipts issued therefor must be stamped with a 25-cent stamp, the same as warehouse receipts.

Sales or transfers of stock. (See Bucket Shops.)

160. In reckoning the stamp tax on transfer of certificates of stock, the tax is reckoned on the face value ("face value" means par value). In reckoning this tax, the fact that only part of the face value of shares

subscribed for and issued has been paid by the shareholders is not to be taken into consideration.

161. Where stock is sold at the par value of \$100, and upon which it appears that only \$25 have been paid, the tax is to be reckoned upon the face value of \$100, and not upon the \$25.

162. Where one certificate represents several shares, the tax of 2 cents on each \$100 or fraction thereof is to be reckoned on the face value of the certificate, and not on the face value of each separate share.

163. On transfer of one certificate representing 500 shares, \$5 par value, the stamp tax required is 50 cents.

164. When certificates of stock or other securities are pledged for a loan, the stamp tax is to be reckoned not on the face value of the certificates or securities, but on the amount of money loaned above \$1,000.

165. When stock is transferred for which no certificate has been issued, and the evidence of transfer is shown only by books of the company, the stamps should be placed upon such books. Where the change of ownership is by the transfer of a certificate, and the certificate contains a blank form of assignment on the back which is filled in by the insertion of the name of the person to whom the stock is transferred, the stamp should be placed upon the certificate transferred and not on the new certificate issued in lieu of the old one.

166. In case of an agreement to sell, or where the transfer is, by the delivery of the certificate, signed in blank, the name of the transferee or vendee to be filled in afterwards, there should be made and delivered by the seller to the buyer a bill or memorandum of sale to which the stamp should be affixed.

167. Where certificates of shares were sold and delivered before July 1, 1898, entry of transfer on corporate books after June 30, requires stamp.

168. New certificates of stock issued to holder in lieu of original certificate, and remaining in his ownership, do not require stamps.

169. When certificate of stock is sold and stamp tax is paid on memorandum thereof, upon transfer of this certificate to purchaser's name no additional tax for such transfer is required. Where one certificate represents several shares of stock (however large the number of shares), on transfer of this certificate the stamp tax is to be reckoned on its face value and not on the face value of each separate share of stock which it represents.

170. Transfers of stock from parties occupying fiduciary relationships to those for whom they held the stock are transfers subject to taxation.

171. A owns a certificate of one hundred shares of stock; he transfers fifty shares to B; there are two certificates of fifty shares each issued in lieu of the one hundred share certificate, fifty shares going to A and fifty shares to B. The tax imposed is on the transfer to B; there is no tax on A's transfer to himself.

Sales of live stock.

172. When a sale is made of live stock at a live stock exchange or any similar place, or an agreement of sale, or an agreement to sell entered into, the seller must give to the buyer a bill, or memorandum, or other evidence of such sale, agreement of sale, or agreement to sell, to which must be affixed the stamp required, viz, 1 cent for each \$100 in value of such sale, agreement of sale, or agreement to sell, and 1 cent for each additional \$100 or fractional part thereof.

173. If live stock is sold at an exchange or board of trade, or other similar place, either for present or future delivery, the sale, agreement of sale, or agreement to sell must be evidenced by a bill, memorandum, or agreement to be delivered by the seller to the buyer, and this evidence should have the stamp affixed as required in the act, viz, 1 cent on each \$100, and on each \$100 or fraction thereof in excess of \$100, an additional 1 cent.

Stamps (adhesive, generally).

174. In regard to who shall pay for stamps required on documents, this office can not dictate. It is the duty of the person, firm, or corporation issuing the instrument to see that it is duly stamped, and a penalty is provided for neglect in so doing, and the inference is drawn that the person, firm, or corporation issuing the instrument shall pay for the stamp required.

175. Proprietary stamps can not be used on documents.

176. Old stamps issued under repealed acts can not be used in lieu of stamps required by the present law.

Tickets (passage on a vessel).

177. Tickets issued in the United States for passage on a vessel not sailing from any port of the United States, but from a Canadian port (or other foreign port), are not subject to stamp tax.

178. The only passage ticket for which stamp tax is required to be paid by this statute is a ticket issued for transportation of the passenger "by any vessel from a port in the United States to a foreign port." When, therefore, to such passenger ticket there is attached another ticket entitling the passenger, after his arrival at the foreign port, to transportation to various points in Europe, or elsewhere, such additional ticket is not subject to stamp tax.

179. The stamp tax for a passenger ticket may be affixed thereto and canceled at the time and place where it is issued, or it may be affixed and canceled at the pier before the passenger boards the vessel.

180. Where one passenger ticket is issued, even though it contains several names, but one stamp tax is required to be paid thereon.

181. There is no exemption from the stamp tax on charity tickets issued at low rates to passengers.

Telegraphic messages.

182. Telegraphic messages sent by the Associated Press over their own private lines to different newspapers are not required to be stamped.

183. When one uses a leased Western Union Telegraph wire, for which he pays a stipulated annual rental and has the exclusive use, and for which he employs his own operator, stamp tax is not required to be paid by him on messages sent by him over this wire relating to his own private business.

184. If the sender of a dispatch is a Government or State officer in the discharge of a duty in carrying out governmental functions required by law in operating the machinery of the Government, the dispatch is exempt; but if the act is simply that which the officer does individually in the interest of a private person or outside party to serve such private person or outside party individually, then the dispatch must be stamped.

185. The payment of tax on messages transmitted by a telegraph company, and subsequently received and transmitted by a telephone company, does not exempt the last-named company from the payment of tax on the message so transmitted.

186. A telegraphic dispatch or message is required to be stamped by the person who makes, signs, or issues it.

Telephone companies.

187. Where telephone companies have lines extending into more than one collection district, the return may be made to the collector of that district in which the principal business office of the company is located.

188. Contracts and agreements between subscribers and telephone companies for the renting of a telephone and payment therefor by a gross sum are not subject to stamp tax.

Warehouse receipts.

189. Stamps should be affixed to warehouse receipts for goods, merchandise, or property held on storage in public or private warehouses, by the warehousemen.

190. If the actual grower of tobacco, which is an agricultural product, deposits the same in a warehouse in the regular course of trade for sale and takes a warehouse receipt, this receipt is exempt from the stamp tax when it is issued, and it is not required to be stamped at any time after its issuance (if the tobacco which it represents remains in warehouse as it was originally deposited by the grower), although the same may be transferred as a negotiable instrument and presented to the warehouseman by other than the original holder.

191. Where tobacco, or the warehouse receipt therefor, is sold "at any exchange or board of trade, or other similar place," a memorandum of such sale must be made by the seller, and the stamp affixed thereto and canceled.

192. Where a warehouse receipt is sold by a broker at his own office or elsewhere than at a place of exchange, or other place of public sale, the 10-cent stamp must be affixed to the memorandum of this transaction under the paragraph relating to broker's contract.

193. Any receipt or memorandum given by a warehouseman, or any signing by a warehouseman of any express company's book or other receipt evidencing the fact that goods have been placed on storage, is such a receipt, requiring a stamp tax of 25 cents, whether the same is negotiable or nonnegotiable.

194. A warehouse receipt which includes also an insurance against fire should be stamped also as an insurance policy, according to the premium charged.

195. Compress receipts for cotton are not taxable as warehouse receipts if they do not embrace any contract, express or implied, for storage, and for which a storage charge is made as such. The receipt for cotton received for compression, handling, and shipment is exempt from taxation.

196. The exemption from tax on warehouse receipts for agricultural products is restricted to receipts for products of this kind, which are deposited by the actual grower thereof in the regular course of trade for sale. This does not exempt warehouse receipts for such products in case the property deposited has already passed from the ownership of the actual grower.

197. A storage receipt for perishable articles, such as fresh meat, fish, etc., placed in cold-storage warehouse from day to day in small quantities, merely for preservation and safety, would not come under the head of "warehouse receipt." But if a warehouse company goes to the extent of receiving for cold storage a considerable quantity of property to be held for some length of time, then their business in such instance would assume the character of a warehouse, and the receipt given under such circumstances ought to bear the stamp. The storage of perishable articles for thirty days or more is *prima facie* evidence that the receipt should be stamped as a warehouse receipt.

198. Where a warehouse receipt is issued covering a large number of packages which for business reasons it is desired to cut up into receipts covering smaller numbers of packages, in such cases every warehouse receipt issued in lieu of a large one must bear a stamp.

G. W. WILSON, *Commissioner*.

REGULATIONS, CIRCULARS, ETC., UNDER ACT OF JUNE 13, 1898.

BILLS OF LADING.

(21538.)

*Relative to export bills of lading subject to stamp tax under the war-revenue act of June 13, 1898.*¹

[Circular No. 109.—Int. Rev. No. 544.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 24, 1899.

To collectors of internal revenue and others:

In accordance with Treasury decision 21496 (page 24), of August 12, 1899, it is held that bills of lading for export, whether issued singly or in sets of two or more covering one shipment, will require but one stamp of 10 cents. In case of export bills of lading issued in sets of two or more, the bill retained by the consignor must be stamped and a notation made on the other bills of the same set, giving the number of bills issued covering the same shipment and a statement that the bill retained by the consignor has been duly stamped.

So much of regulations, series 7, No. 4, *revised* December 29, 1898, relating to export bills of lading covering distilled spirits exported in bond, as is inconsistent with the foregoing decision is hereby revoked. In this connection, attention is also called to the fact that under a former decision bills of lading issued by steamboats or other vessels plying only between ports of the United States and *British North America* are not required to be stamped.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

Approved:

L. J. GAGE, *Secretary.*

¹This has been modified by opinion of the Attorney-General, dated January 2, 1900, so that export bills of lading issued for goods shipped from United States to points in Canada or Mexico *by rail* require only a 1-cent stamp and not a 10-cent stamp. (See page 29.)

BROKERS.

(21286.)

Agents of steamship companies.

Agents of steamship companies, who receive money from persons desiring to make remittances to foreign countries, and issue checks therefor, are not engaged in the business of selling "exchange" within the meaning of paragraph 2, section 2, act of June 13, 1898, and are not required to pay special tax therefor as brokers.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 20, 1899.

To collectors of internal revenue:

In view of the fact that all persons engaged in any business on the 1st of July, 1899, for which special tax is required to be paid, must make return under oath to the collector, pay the tax, and take out the requisite stamp for the year beginning on that date, the question of the special-tax liability, as brokers, of agents of steamship companies, who receive money from persons desiring to make remittances to foreign countries, and issue checks therefor, has again been brought before this office.

The law (paragraph 2, section 2, act of June 13, 1898) clearly requires that every person, whose business it is to negotiate purchases or sales of "exchange," shall be regarded as a broker, and pay the special tax of \$50 for the year beginning July 1. But, in order to warrant the assessment and collection of special tax from any person as a broker under this provision of the law, two facts must be clearly established—first, that he sells "exchange;" second, that it is his business to make such sales. The words "whose business it is" are controlling words in the definition of a broker, contained in the statute, and it has devolved upon this office to determine what constitutes the "business" thus referred to. It has accordingly been held that the mere fact of selling "exchange" from time to time does not of itself involve the person selling in special-tax liability as a broker; but that in order to hold him to such liability, it must be shown that, in addition to such sales or purchases, he has by advertisement, or by sign in his place of business, or in his letter-heads, or cards, or otherwise, held himself before the public as ready to engage in such sales or purchases. Where these facts are shown, whether in the case of steamship agents, or any other person, this office has but one duty in the premises, and that is to require the payment of the special tax which the statute imposes.

It is, however, now contended in behalf of steamship ticket agents that the transactions in which they are engaged, in receiving money from persons for transmission abroad through their respective com-

panies, do not constitute the sale of "exchange" within the meaning of the law. Those transactions have been described briefly as follows: Each agent of steamship companies receives a certain number of checks signed by said company, respectively, in blank, which checks are drawn upon certain foreign banks therein named; he is authorized to deliver these checks to persons desiring them, the agent receiving as his compensation a certain percentage "on each pound or receipt for \$5." It is urged that this does not constitute the negotiation of purchases or sales of "exchange," or any other of the "securities" contemplated by the statute; that the check given is an ordinary check, drawn and signed by the company upon certain banks; that at most it is a money order, which, as between the bank and payee, need not be paid; that the payee acquires nothing by purchase or sale, not even a claim against the bank; that at the most, if the check is not paid, he has an action against the company for money had and received; that the checks are issued for the convenience of persons desiring to remit money abroad, these persons trusting to the honor of the signer of the check to see that the amount is on deposit at the bank to pay the check when presented; that the transaction thus described is only an executory contract, and not a sale or purchase.

There is, in the opinion of this office, great doubt whether the steamship agents who thus receive and transmit money can be regarded as engaged in selling "exchange," within the meaning of the word "exchange," as it is found in the statutory definition of brokers. Collectors are, therefore, hereby instructed to take no action looking to the exaction of special tax from any of these agents on account of the transactions herein described until they shall have been otherwise directed by this Department.

G. W. WILSON, *Commissioner*.

GROSS RECEIPTS.

(21367.)

Gross receipts taxable under section 27, act of June 13, 1898.

[Circular No. 93—Int. Rev. No. 540.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 7, 1899.

To collectors of internal revenue and others:

Section 27 of the act of June 13, 1898, provides:

That every person, firm, corporation, or company carrying on or doing the business of refining petroleum, or refining sugar, or owning or controlling any pipe line for transporting oil or other products, whose gross annual receipts exceed two hundred and fifty thousand

dollars, shall be subject to pay annually a special excise tax equivalent to one-quarter of one per centum on the gross amount of all receipts of such persons, firms, corporations, and companies in their respective business in excess of said sum of two hundred and fifty thousand dollars.

And a true and accurate return of the amount of gross receipts as aforesaid shall be made and rendered monthly by each of such associations, corporations, companies, or persons to the collector of the district in which any such association, corporation, or company may be located, or in which such person has his place of business. Such return shall be verified under oath by the person making the same, or, in case of corporations, by the president or chief officer thereof. Any person or officer failing or refusing to make return as aforesaid, or who shall make a false or fraudulent return, shall be liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars for each failure or refusal to make return as aforesaid and for each and every false or fraudulent return.

Section 31 of the same act provides:

That all administrative, special, or stamp provisions of law, including the laws in relation to the assessment of taxes, not heretofore specifically repealed are hereby made applicable to this Act.

Section 3447 of the Revised Statutes of the United States provides:

Whenever the mode or time of assessing or collecting any tax which is imposed is not provided for, the Commissioner of Internal Revenue may establish the same by regulation. He may also make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

1. *Tax when due to be assessed.*—The tax imposed by section 27, above quoted, being a special excise tax, the word “annually” as used in that section is held to apply to the special-tax year (commencing July 1) as defined in section 53 of the act of October 1, 1890.

Under the provisions of section 31, above quoted, it is also held that the tax thus imposed is assessable as soon as determined from the monthly returns required to be rendered.

2. *Gross receipts.*—As the tax so imposed is to be computed on “the gross amount of all receipts” in excess of \$250,000, such gross receipts are held to include, not only receipts from sales (or transportation), but all receipts, including rents, interest, dividends, storage charges or commission, received from or in connection with the business enumerated in said section 27 during the period for which the required return is made. Deductions on account of cost of raw materials, customs duties, and operating expenses, heretofore claimed in certain cases, are under no circumstances permissible.

3. *Returns, when and by whom to be made.*—Every person, firm, corporation, or company liable to tax under said section 27 will hereafter render a return, on Form 420, *revised*, of the gross amount of all receipts each month, and not later than the fifteenth day of the following month. When the returns made include the receipts of any branch or “constituent” company engaged in the business of refining petroleum or sugar, or in operating any pipe line, in the same or

in another district, the name and location and the receipts of each such branch or constituent company should be stated in each return rendered.

The foregoing instructions will also apply to all such persons, firms, corporations, and companies where the gross receipts, during the period for which the return required by law is made, do not exceed the \$250,000 specially exempted from tax. A monthly return will also be required during the temporary suspension of business. Where, however, the business carried on has been permanently discontinued, that fact should be noted on the last return rendered.

4. *Change in name of firm, etc.*—Changes in the name or style of any firm or company or in the personnel of any firm or company which has become liable for the special excise tax imposed will not be regarded, under the act named, as constituting a new firm or company. In all such cases, therefore, the exemption of \$250,000 will be allowed only on the combined annual gross receipts of the firm or company as to which such changes occur.

5. *Sugar produced and refined by continuous process.*—Manufacturers who claim to refine only sugar of their own production, and to sell directly to consumers, will also be required to furnish a monthly sworn statement (to be attached to the prescribed return, Form 420, revised), setting forth specifically that all sugar refined by them during the month was produced and owned by them, and was refined on the same premises where produced, and by a continuous process, and was sold directly to consumers. Persons, firms, corporations, and companies refining sugar not so produced, owned, and sold will be liable to the special excise tax imposed, and will be required to render a return on the prescribed form of the gross amount of *all* receipts.

6. *Sugar or oil refined by agents, etc.*—Every person, firm, corporation, or company owning or controlling any sugar or oil refinery, and, under any lease, contract, or agreement, receives, sells, or negotiates the sale of any sugar or oil refined on the premises so owned or controlled, or receives any profits accruing therefrom, will be regarded as a refiner, and, as such, will be required to make the prescribed return. Where the receipts or profits so realized, or any portion thereof, are included in the returns rendered by the person, firm, or company in whose name, or through whose agency, the business is so carried on, the fact should be noted on the returns as provided in instruction 3 of this circular.

The same instructions will apply to persons, firms, corporations, or companies owning or controlling any pipe line for the transportation of oil or other products.

7. *Returns to be verified under oath.*—In case of corporations, the returns made must in every instance be verified under oath by the president or chief officer, as required by law. This requirement does not admit of such verification by a cashier, secretary, or treasurer, or by any officer other than that designated by law.

In case of a firm, the returns should be verified by a member thereof, who should sign his name as such to each return rendered.

The required returns being under oath, and containing statements based on personal knowledge, the same will not, in any case, be accepted if made by an agent or attorney of the person or officer required to make the same.

8. *Original returns to be furnished with assessment lists.*—The original returns, Form 420 revised, should in all cases be forwarded by collectors to the Commissioner of Internal Revenue, with the lists, Form 23, on which the assessment is to be made. Unless such returns are filed in duplicate, copies thereof should be retained in the collector's office.

9. *Changes in the prescribed form not permitted.*—No erasures or interlineations in the prescribed form should be made in any case.

Where exemptions other than the \$250,000 are claimed, or where the return rendered is made under protest, such exemptions or protest may be noted, either on the margin of the return or in a memorandum attached thereto.

Collectors will see that the foregoing instructions are carefully complied with in every case, and that all persons, firms, corporations, and companies in their respective districts, engaged in the business enumerated in section 27, are furnished with a copy of this circular and with sufficient blanks (Form 420 revised) on which to make the required returns. Any failure to make the required return, or the making of any false or fraudulent return, should be at once reported to the Commissioner of Internal Revenue in order that proceedings may be instituted for the enforcement of the penalties imposed in such cases.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

Approved:

L. J. GAGE, *Secretary.*

INTERNAL-REVENUE STAMPS.

(21394.)

List of contractors authorized to imprint stamps, also list of stamp agents, together with instructions as to procurement of said stamps.

[Int. Rev. Circular No. 541.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., July 12, 1899.

To collectors and stamp agents:

The following list contains the names and addresses of all contractors authorized to imprint revenue stamps on checks, drafts, and other instruments for the fiscal year beginning July 1, 1899, together

with the name of the stamp agent in charge of imprinting stamps at each establishment:

Contractor.	Address.	Stamp agent.
August Gast Bank Note Company	St. Louis, Mo.	W. S. Thompson.
Geo. D. Barnard	do	J. C. Brown.
The Armour Printing Company	Chicago, Ill.	D. H. Lamberson.
P. F. Pettibone & Co.	do	I. L. Gifford.
The American Imprinting Company	New York, N. Y.	Eugene Delmar.
The Milliken Imprinting Company	do	A. Smith.
The Franklin-Lee Bank Note Company	do	G. G. Beers.
The Union Bank Note Company	Kansas City, Mo.	J. C. Lepscem.
The Hudson-Kimberly Publishing Company	do	Wm. T. Aydelott.
Geo. M. Courts	Galveston, Tex.	J. D. Settle.
Guggenheimer, Weil & Co.	Baltimore, Md.	W. B. Jenkins.
Wm. A. Carrie & Co.	Boston, Mass.	Frank Cousins.
C. H. Brandon	Nashville, Tenn.	J. C. Jacobus.
A. M. Glosbrenner	Indianapolis, Ind.	J. S. Coulogue.
The Strobbridge Lithograph Company	Cincinnati, Ohio	A. E. B. Stephens.
The Penn Printing and Publishing Company	Philadelphia, Pa.	J. C. Johnson.
The Pueblo Lithographing and Printing Company	Pueblo, Colo.	W. E. Stimpson.
The Union Lithograph Company	San Francisco, Cal.	F. A. Sprague.
The J. C. Hall Company	Providence, R. I.	C. D. Sellow.
The Combe Printing Company	St. Joseph, Mo.	E. O. Wild.
Thomas E. Cooley	Minneapolis, Minn.	F. M. Barnard.
The Blatchley Lithograph Company	Tacoma, Wash.	G. E. Cleveland.
The Hall Lithographing Company	Topeka, Kans.	Fred K. Brown.
The Evening Wisconsin Company	Milwaukee, Wis.	Jno. Saveland.

INSTRUCTIONS RELATIVE TO PROCURING IMPRINTED STAMPS.

Persons desiring to have stamps imprinted upon checks, drafts, or other instruments will make application therefor themselves, or through their agent, who must not be a contractor for the imprinting of stamps, to a collector of internal revenue, transmitting or presenting with such application payment for the stamps. The application must state the name and address of the contractor who will imprint the stamps, and should authorize the delivery of the instruments when stamped to the said contractor. Collectors will not accept money from contractors for stamps to be imprinted for other persons, under any circumstances, and stamp agents will refuse to imprint stamps except upon orders fully complying with these instructions. When orders are issued for stationers or other agents, for stamps to be imprinted for other persons, the stamp agent to whom such order is directed must enter upon the back thereof the name and address of each person, firm, or corporation for whom stamps are imprinted on such order, together with the date and number of stamps imprinted for each. Upon receipt of application and payment for imprinted stamps the collector will forward to the stamp agent at the establishment of the contractor designated an order for the imprinting of the stamps and the delivery of the stamped paper to the contractor. Collectors should in all cases attach their seals to such orders, and agents must take the contractor's receipt for all stamped paper delivered. Blank checks, drafts, or other instruments to be imprinted with revenue stamps should be forwarded by the person desiring the same, at his expense, directly to the contractor who will imprint the stamps.

The Government will not pay any expense or assume any risk on paper forwarded to contractors, or on stamped paper returned by contractors to owners.

The contractor's charge for imprinting stamps is limited by the terms of his contract with the Government to 80 cents per thousand stamps imprinted, when imprinted upon sheets containing five or more stamps, and \$1 per thousand stamps when imprinted upon sheets containing less than five stamps to the sheet, and payment for imprinting stamps should be made directly to the contractor. All stamps shall be imprinted at the price herein named without discount or rebate, and only upon checks, drafts, or other instruments delivered entirely at the expense of the person, firm, or corporation presenting the same. When the stamps are imprinted and delivered to the contractor, he shall, under the direction and supervision of the stamp agent, at the contractor's expense, pack, in the proper manner for shipment, all checks, drafts, or instruments upon which said stamps were imprinted by him, and ship the same wholly at the expense and according to the direction of the person, firm, or corporation that presented them. Contractors are prohibited from paying any transportation charges whatever on instruments forwarded them to be imprinted, or on stamped instruments returned by them to the owners. They are also prohibited from giving, offering, or advertising any discount, rebate, or reduction in the printing of taxable instruments, or claiming better facilities for such work, by reason of their contract with the Government for the imprinting of stamps.

Any violation of the foregoing instructions by a contractor will be deemed sufficient cause for the cancellation of his contract, and any failure on the part of the stamp agent to immediately report to this office the violation of any of the terms or conditions of said contract will be considered cause for his removal from office.

**IMPRINTING STAMPS IN LIEU OF OTHERS RENDERED USELESS BY
ACCIDENT OR ERROR IN PRINTING OR BINDING.**

Where instruments imprinted with stamps are rendered worthless by accident or error in printing or binding, they may be returned to the stamp agent under whose supervision stamps were imprinted thereon with the application to imprint other stamps in lieu thereof on instruments presented for that purpose. Such application should be accompanied by an affidavit setting forth the facts that such stamped instruments were rendered worthless by error or accident, the number thereof, the date when and the collector from whom the stamps were purchased. Upon receipt of the application the stamp agent will indorse his recommendation thereon and forward the same to the office of the Commissioner of Internal Revenue for action and approval. The spoiled stamped instruments thus returned to the stamp agents will be retained by them until an order is issued for the

destruction of the same under the supervision of a revenue officer. When destroyed, a joint certificate must be made by said officer and the stamp agent, stating the number and denomination of stamps destroyed, for whom, and upon what order the same were imprinted, and the number of such stamps imprinted for each person, firm, or corporation, which certificate shall be forwarded to this office. Stamp agents will enter upon their records and reports the names of all persons for whom stamps are imprinted, together with number of stamps and the original order upon which such stamps were imprinted.

G. W. WILSON, *Commissioner*.

(21706.)

Stamp tax—Refunding.

Revised ruling as to refunding amounts paid for documentary stamps used in error or excess, and as to the redemption of unused documentary stamps.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., October 26, 1899.

To all collectors:

The attention of this office having been called to the propriety of a modification of the ruling embraced in Treasury decision 20125¹ relative to the refunding of amounts paid for documentary and proprietary stamps, the ruling is hereby revised as follows:

This office holds that a stamp once affixed to an instrument, paper, or document requiring such stamp, and canceled, can not lawfully be removed therefrom and affixed to another instrument, paper, or document requiring a stamp.

In cases where stamps have been affixed to instruments not requiring them, and canceled, or where, by error, stamps of greater value than that required by law have been used, the amounts paid in error or excess may be refunded upon claims made on Form 46 accompanied by the stamps, and, where practicable, by the instruments to which the stamps have been erroneously attached, or copies thereof.

These instructions as to the use of Form 46 will also apply to cases where an instrument is duly stamped and is accidentally injured or found to be defective, and a substitute is prepared and duly stamped.

Instruments or papers requiring stamps should not, as a rule, be stamped until about to be used or delivered. As long as deeds, bonds, insurance policies, and similar papers remain in the hands of the party executing them, they require no stamps. Where a document not used

¹Compilation of Decisions Rendered by the Commissioner of Internal Revenue under the War-Revenue Act of June 13, 1898 (January, 1899), page 182.

or delivered may have been prematurely stamped and the stamps canceled, the claim for refunding may be made on Form 46, and will be considered under section 3220, Revised Statutes. In every such case this office will require positive evidence that the paper was never delivered or used. Where practicable, the fact of the nondelivery or nonuse of an instrument or paper should be established by the sworn statements of both parties to the contract, and it should be clearly stated, under oath, who paid for the stamps, whether they were purchased at a discount or at the full face value, and whether the party in whose name the claim is made has been reimbursed for the stamps by any person or persons.

Where stamps have not been affixed to an instrument, or, having been affixed, have not been canceled, and the party paying for the stamps desires to have them redeemed, the claim should be made for redemption on Form 38, and it will be considered under section 3426, Revised Statutes.

Collectors should in all cases, before transmitting a claim to this office, see that the rulings relating thereto have been fully complied with; that the deputy collector's affidavit has been made and his own certificate signed, and if a previous claim has been presented, that the fact is noted.

G. W. WILSON, *Commissioner*.

(21814.)

Amending regulations as to cancellation of documentary and proprietary stamps.

[Circular No. 142.—Int. Rev. No. 549.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 1, 1899.

To collectors of internal revenue and others:

Existing regulations providing for the cancellation of adhesive revenue stamps by writing or stamping thereon, with ink, the initials of the name and the date when attached, or by cutting and canceling said stamp with a machine or punch which will affix the initials and date as aforesaid, and the cancellation of imprinted stamps on checks, drafts, or other instruments by filling out the dates and blank lines on said instruments in the usual manner of drawing checks and drafts, or by perforating through the stamp and paper to which it is attached the amount in figures for which said instrument was drawn, having proved inadequate to prevent frauds on the revenue which have been, and now are, extensively practiced, said regulations are hereby amended by adding thereto the following provision and requirement:

“In all cases where a documentary stamp of the denomination of 10 cents or any larger denomination shall be used for denoting any tax

imposed by the act of June 13, 1898, the person using or affixing the same shall, in addition to writing or stamping thereon, with ink, the initials of his name and the date when affixed, mutilate said stamp by cutting three parallel incisions lengthwise through the stamp, beginning not more than one-fourth of an inch from one end thereof, and extending to within one-fourth of an inch of the other end.

"Where such stamp is canceled by cutting or perforating in any manner authorized by existing regulations, as aforesaid, the mutilation herein provided will not be required."

This provision shall take effect and be in force on and after December 15, 1899.

G. W. WILSON, *Commissioner*.

Approved:

L. J. GAGE, *Secretary*.

MEDICINAL PREPARATIONS.

(21875.)

Stamp tax—Medicinal preparations.

List of uncompounded medicinal drugs or chemicals held by the Office of Internal Revenue to be exempt from tax under section 20, act of June 13, 1898.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 19, 1899.

To collectors of internal revenue and others:

The following is an alphabetically arranged list of medicinal articles, all of which are either patented or trade-marked, or both, that have been from time to time submitted to chemical examination in the laboratory of this office, and found to be definite chemical compounds, therefore uncompounded drugs or chemicals, and as such entitled to the exemption provided under section 20 of the act of June 13, 1898, as construed by Mr. Justice Brown of the United States district court for the southern district of New York (Treasury decision No. 20634, page 230; 91 Fed. Rep., 608). This list includes also the twelve articles mentioned as exempt in the decision of Mr. Justice Brown above referred to. Collectors and revenue agents will furnish copies of this list to subordinates, that they may compare with it suspected patented or trade-marked medicinal drugs or chemicals, holding such as are not contained herein to be taxable:

Acid carbolic Merck (phenol).
Agathin (salicyl-methyl-phenyl-hydrazone).
Airol (bismuth oxy-iodo-gallate).
Alummol (beta-naphthol-disulphonate of aluminum).
Antifebrin (acetanilid).
Antiseptic credé (citrate of silver).
Apolysin (mono-phenetidin citric acid).

Aristol (di-iodo-dithymol).
 Baking soda (bicarbonate of soda), Arm & Hammer brand.
 Baking soda, Cow brand.
 Benzosal (guaiacol benzoate).
 Beta-eucaine (hydrochloride of benzoyl-vinyl-diaceton-alkamin).
 Blennostasine (cinchonidine dibromide).
 Bromalin (hexamethylene-tetramine-brom-ethylate).
 Chloralamid (chloral-formamid).
 Dermatol (bismuth subgallate).
 Dithion (dithiosalicylate of soda II).
 Duotal (guaiacol carbonate).
 Endoxine (bismuth salt of tetraiodo-phenolphthalein).
 Euphthalmine (hydrochloride of methyl-vinyl-diacetone-alkamine-phenyl-glycolyl).
 Euphorine (phenyl-urethane).
 Euquinine (ethyl-carbonic ester of quinine).
 Europhen (isobutyl-ortho-cresol-iodid).
 Exalgine (methyl-acetanilid).
 Ferropyrine or ferripyrrine (ferric-chloride-antipyrine).
 Formalin (solution of formaldehyd).
 Geosot (guaiacol valerianate).
 Guaiacol-salol (guaiacol salicylate).
 Guajacetin (pyro-catechin-mono-acetic acid).
 Guaiquin (quinine guaiacol-bisulphonate).
 Heroin (acetic ester of morphine).
 Holocain (para-diethoxy-ethenyl-diphenyl-amidin hydrochloride).
 Hydrogen dioxide, Oakland brand.
 Hypnal (mono-chloral-antipyrin).
 Iodole (tetra-iodo-pyrrol).
 Kryofine (methyl-glycollic-phenetidin).
 Lactophenin (lactyl-phenetidin).
 Losophan (tri-iodo-meta-cresol).
 Lycetol (dimethyl-piperazin tartrate).
 Lysidine (methyl-glyoxalidin, solution in water).
 Neurodin (acetyl-p-oxy-phenyl-urethane).
 Oleoguaiacol (guaiacol oleate).
 Orphol (beta-naphtholate of bismuth).
 Orthoform hydrochloride (methyl-para-amido-meta-oxybenzoic hydrochloride).
 Orthoform, new (methyl-meta-amido-para-oxy-benzoate).
 Parachlor-salol (salicylate of chlor-phenol).
 Paraform (para-formaldehyd).
 Phenacetin (para-acet-phenetidin).
 Phenocoll hydrochloride (amido-aceto-para-phenetidin hydrochloride).
 Piperazine (diethylene-diamin).
 Protargol (silver and albumen).
 Pyoktanin yellow (imido-tetramethyl-di-p-amido-diphenyl-methan chloride).
 Pyramidon (di-methyl-amido-phenyl-dimethyl-pyrazolon).
 Pyrodin (acetyl-phenyl-hydrazin).
 Quinalgen (ortho-oxyethyl-alpha-benzoyl-amido-quinolin).
 Salacetol (salicyl-acetol).
 Salipyrin (salicylate of antipyrin).
 Salol (phenyl salicylate).
 Salophen (aceto-para-amido-salol).
 Sozoiodole mercury (sozoiodolate of mercury).
 Sozoiodole sodium (di-iodo-para-phenol-sulphonate of sodium).
 Sozoiodole zinc (sozoiodolate of zinc).
 Sulphonal (diethyl-sulphon-dimethyl-methan).
 Stypticin (cotarnine hydrochlorate).
 Tannoform (methylene-ditannin).
 Tannigen (diacetyl-tannin).
 Tannopine (hexamethylene-tetramine-tannin).
 Thermodin (acetyl-para-ethoxy-phenyl-urethane).
 Trional (di-ethyl-sulphone-methyl-ethyl-methan).
 Triphenin (propionyl-phenetidin).
 Tussol (antipyrin mandelate).
 Urotropin (hexa-methylene-tetramine).
 Water, distilled.
 Xeroform (tribrom-carbolate of bismuth).

G. W. WILSON, *Commissioner*.

MIXED FLOUR.

(21168.)

Modification of regulation concerning the placing of caution labels upon packages of mixed flour.

[Circular No. 73—Int. Rev. No. 533.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 17, 1899.

To collectors of internal revenue and others:

The regulation concerning the placing of caution labels upon packages of mixed flour, as shown in paragraph under Form W, on page 14, series 7, No. 25, is modified to read as follows: The label must be securely affixed by paste or printed horizontally across the side of the package in such a way as to be exposed to public view and easily read, and it must not be placed over or upon the Government brand.

G. W. WILSON, *Commissioner.*

Approved:

L. J. GAGE, *Secretary.*

PAWNBROKERS.

(21524.)

Pawnbrokers' tickets.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 23, 1899.

To collectors of internal revenue:

The ruling of this office, embodied in circular letter of July 20, 1899, as to the liability of pawnbrokers' tickets to stamp tax as warehouse receipts is hereby modified and revoked as follows:

The tax will not be held to have been incurred in any case except where the article deposited is deposited for storage purposes and not as a pledge.

The ruling as originally made proceeded upon the theory that pawnbrokers who claimed to do a storage business and to store goods for hire, in order to avoid State laws of limitation upon interest charges, might properly be taken at their word and their receipts be placed in the taxable category as warehouse receipts, because of being given, *prima facie*, for goods "held on storage."

Upon further consideration, it is concluded that the pretense of pawnbrokers that goods pledged with them are held on storage by them, and their practice of charging the depositor therefor does not make it true that they are so held within the meaning of the act of June 13, 1898, as to goods and merchandise pledged as security for money loaned. And if the goods are not held on storage the receipts issued therefor are not warehouse receipts.

Some reasons for this conclusion are—

First. The fact that an identical provision in the internal-revenue act of July 1, 1862, was not construed by the head of this Bureau or by his immediate successors as applying to pawnbrokers' tickets.

Second. The fact that the instrument known as "warehouse receipt" has a fixed and determined meaning. The words are descriptive of a specific thing, and it is deemed probable that a pawnbroker's receipt or ticket, given for property pledged with him, would not be held by the courts to have the characteristics of such specific thing.

Third. The fact that the stamp tax if imposed would be added to the charge made by the pawnbroker, thereby additionally burdening the unfortunate.

You will please advise all parties in interest in accordance with the foregoing.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

POST STAMPING OF INSTRUMENTS AND DOCUMENTS.

(21539.)

Post stamping of instruments or documents of any description mentioned in Schedule A, act of June 13, 1898, after the expiration of twelve months from date of issue.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 25, 1899.

To collectors of internal revenue:

Section 13 of the act of June 13, 1898, deals first with intentional omissions to affix and cancel stamps upon any instrument mentioned in Schedule A, making such an omission a misdemeanor, punishable by fine and imprisonment.

The first proviso to the section is somewhat ambiguous in that it reads—

In all cases where the party has not affixed to *any* instrument the stamp required by law thereon at time of issuing, selling, or transferring the said bonds, debentures, or certificates of stock or of indebtedness, and he or they, or any party having interest therein, shall be

subsequently desirous of affixing such stamp to said instrument, or, if said instrument be lost, to a copy thereof, he or they shall appear before the collector of internal revenue of the proper district, who shall, upon the payment of the price of the proper stamp required by law, and of a penalty of ten dollars, * * * affix the proper stamp to such bond, debenture, certificate of stock or of indebtedness or copy, and note upon the margin thereof the date of his so doing, and the fact that such penalty has been paid; and the same shall thereupon be deemed and held to be as valid, to all intents and purposes, as if stamped when made and issued.

The words "selling, or transferring the said bonds, debentures, or certificates of stock or of indebtedness," were apparently interpolated in the text of the statute after the word "issuing," in the place of the words "the said instrument," as found in section 3422, Revised Statutes, without it being observed that they would tend to limit the operation of the provisos to said section to the particular instruments specified therein, notwithstanding the body of the statute deals with all instruments of whatever kind mentioned in Schedule A. This office, however, is of opinion that it was not the legislative intent to so limit the scope of the provisos. It has, therefore, held that all instruments mentioned in Schedule A are embraced in said provisos.

The second proviso authorizes the post stamping of "any such instrument" not stamped by reason of "accident, mistake, inadvertence, or urgent necessity, and without willful design to defraud the United States," within twelve months of date of issue, and empowers the collector to remit the penalty and to cause the instrument to be stamped, and declares said instrument then valid as if stamped when issued.

The above are all the provisions of the section which have relevancy to cases now pending or hereafter to arise. It appears, therefore, that no provision has been made whereby the penalty incurred by non-willful omission to stamp instruments can be remitted by the collector and the instruments stamped and validated after twelve months from date of issue. The act seems to be silent as to any method whereby such omission can be cured otherwise than under the first proviso.

Collectors are instructed that in cases of nonwillful omission to stamp instruments, arising after twelve months from date of issuance of the same, where the parties interested wish to avoid the payment of penalty, no other or further action on the collector's part will be expected than the collection of the stamp taxes due. No steps need be taken in such cases to enforce collection of the penalty, but no notation will be made by them on the instrument in such cases.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

SPECIAL-TAX PAYERS' RETURNS.

(21316.)

Reporting delinquent special-tax payers for assessment of taxes and assessable penalties and revising Circular No. 470.

[Int. Rev. Circular No. 539.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., June 27, 1899.

To collectors of internal revenue:

Collectors in reporting on Form 23 the names of persons liable to assessment of special taxes or the assessable penalties of 50 per cent for neglect or delay in making returns on Form 11 or Form 457, or of 100 per cent for making false or fraudulent returns on Form 11 or Form 457, will be careful to clearly state in the space allotted for the purpose all the facts necessary to enable this office to make the determinations and assessments, including the assessment of these penalties, as required by law.

1. The only lawful returns of special tax are those made on the forms prescribed by this office. The prescribed return, properly sworn to, should be made by each person liable to pay a special tax. If, however, the person is conducting a business which renders him liable to pay two or more kinds of special tax returnable on Form 11, as where a man is engaged in selling distilled spirits, sometimes in quantities less than 5 gallons and sometimes in quantities of 5 gallons or more, and is also a dealer in tobacco, and the proprietor of a theater in a city of over 25,000 population per last census, all at the same place of business, and is liable, therefore, to pay the tax of a retail liquor dealer, a wholesale liquor dealer, a dealer in tobacco, and of a proprietor of a theater, he must make one return on Form 11 as retail liquor dealer, wholesale liquor dealer, dealer in tobacco, and proprietor of a theater. If he omits to specify either of the kinds of business in his return, Form 11, his statement on Form 11 "that he has done no business for which he would be liable to pay a special tax without having paid the same, except as above," might be false.

The provision of the law (sec. 3173, Rev. Stat., as amended), which authorizes the collector or deputy collector to make a *return* for a person liable to a special tax who declares to the collector or deputy the character of his business, refers to the *return* on the prescribed form, which must be filled up and delivered by the collector or deputy to the special-tax payer for the latter's signature and oath.

2. A person who makes a true return of special tax on the day on which he commences or continues business (in the latter case always July 1) is not liable to the 50 per cent penalty nor to the 100 per cent penalty, neither is he liable to either of such penalties if he renders to the collector or deputy such return during the month in which he

commences or continues business. Also, if such person is sick or absent during the whole calendar month or that part thereof elapsing from the time he commences business to the end of the month, he may make his return on Form 11 or Form 457, as the case may be, at any time within thirty days after the close of such month, without incurring the 50 per cent penalty, *provided* that the collector, after being satisfied of such continued sickness or absence, excuses him from making the return for such period not exceeding thirty days (sec. 3176, Rev. Stat., as amended).

As it is sufficient in the case of a firm that the return on Form 11 or Form 457 be made by a member thereof, the collector will not have a valid reason for excusing the firm, as provided in section 3176, unless all the members thereof are absent or sick, as above stated.

It will be seen that if the date when the return is received, as stated in column 7, Form 23, is later than the last day of the calendar month in which the taxpayer commences or continues business as above stated, it will be necessary to assess the 50 per cent penalty unless the collector excuses the taxpayer on account of sickness or absence as aforesaid and notifies this office of the fact on Form 23, or by letter, so that the fact of such excuse may be considered at the time the assessment is made; or, unless it be shown that the facts as to the special-tax payer's business were known to the collector or deputy in ample time for him to have made up the return for the taxpayer and to have received it back, duly signed and sworn to, before the expiration of the calendar month in which the business was begun, and that the collector or deputy neglected this duty.

The special excise tax imposed on gross receipts is returnable monthly on Form 420. A return on that form should be filed with the collector within fifteen days after the close of the month for which it is rendered. The amount of tax ascertained to be due should be assessed (see sec. 31, act of June 13, 1898), and, when assessed, should be collected as in the case of other assessed taxes.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(21517.)

Concerning assessable penalties of 50 per cent and 100 per cent.

[Int. Rev. Circular No. 543.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 12, 1899.

To officers of internal revenue:

Collectors and agents of internal revenue whose duty it is to ascertain and report for assessment the 50 per cent and 100 per cent pen-

alties imposed by law will be guided by the following instructions in computing said penalties:

(1) A 50 per cent penalty is due in every case where the required return is not made within the time prescribed by law, or within the additional thirty days for which the collector may excuse a person on account of sickness or absence.

(2) A penalty of 100 per cent is always computed upon the amount actually due over and above that shown to be due by the false return. In the case of special taxes, the basis on which the 100 per cent penalty is to be computed may be the one or more other taxable occupations of the taxpayer not disclosed in his false return, or the additional time for the same occupation not disclosed by the false return.

(3) When both of these penalties are incurred for the same period they are assessable at the same time. As they accrue for different reasons, they are in no way interdependent upon each other, and the assessment of the one never includes or prohibits the assessment of the other. For example: A person who was in business July 1, 1898, as W. M. L. D. and R. M. L. D., and who, in January, 1899, makes a return as R. M. L. D. for six months ending June 30, 1899, is liable to taxes and penalties as follows:

R. M. L. D., twelve months ended June 30, 1899, \$20 tax.

R. M. L. D., twelve months ended June 30, 1899, \$10; 50 per cent penalty.

For return made false as to six months, R. M. L. D., \$10; 100 per cent penalty.

W. M. L. D., twelve months ended June 30, 1899, \$50 tax.

W. M. L. D., twelve months ended June 30, 1899, \$25; 50 per cent penalty.

For return made false as to W. M. L. D. for year, \$50; 100 per cent penalty.

G. W. WILSON, *Commissioner*.

(21536.)

Concerning the circular letter of August 12, 1899, relating to the 50 per cent and 100 per cent assessable penalties.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., August 23, 1899.

To officers of internal revenue:

In order to correct an erroneous impression that seems to have been derived from the circular letter of August 12, 1899, collectors and revenue agents are hereby informed that the purpose of that circular was not to indicate that there had been any laxity heretofore in the

exaction of the 100 per cent penalty in any cases in which the facts showed it to have been clearly incurred, or to induce a greater exhibition of zeal in the discovery and report of cases indicating the liability of special-tax payers to this penalty. This circular was intended mainly to explain the method of computation of the penalty.

It is only when the facts in any case reported to this office show, or tend to show, an intentional falsification of the return on Form 11 by the special-tax payer that this office feels warranted in assessing the 100 per cent penalty. Collectors and revenue agents, in making their reports of cases of this kind, are expected to submit, in behalf of the special-tax payer, any facts or circumstances tending to show that in his sworn return he had not willfully made a misstatement in regard to his liability.

ROBT. WILLIAMS, Jr., *Acting Commissioner.*

(21850.)

Special-tax payer—Arrest for failure to pay.

Where a person, after his arrest for failure to pay special tax as required by law, proffers to the collector the amount of the tax and 50 per cent penalty, upon his signing and swearing to return, Form 11, the collector should receive the money proffered. This does not relieve such person from his criminal liability.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., December 13, 1899.

To collectors of internal revenue:

Collectors are advised that where any person involved in special-tax liability, "after warrant of arrest has been issued," proffers to the collector the amount of the special tax and penalty, he should, of course, accept this money, requiring the person at the same time to make sworn return, Form 11. This payment does not have the effect of relieving him from his criminal liability for having carried on his business without having paid the special tax within the time required by the law. (*United States v. Angell*, 11 Fed. Rep., 34; *United States v. Van Horn*, 20 Int. Rev. Rec., 145; *United States v. Devlin*, 6 Blatch., 71.)

G. W. WILSON, *Commissioner.*

TOBACCO.

(21045.)

Sale of leaf tobacco.

Loose leaf tobacco composing the breaks on the warehouse floors in the loose-leaf markets may be sold at public auction, or at private sale, by the owner or warehouseman, who will not be required to pack the same in hogsheads, cases, or bales before offering the same for sale.—Packages of leaf tobacco received at such public warehouses may be broken and the tobacco removed therefrom to the warehouse floor and separated into as many lots as there are grades of tobacco contained in such package; and each lot may be offered for sale separately from the remainder of the tobacco.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., April 19, 1899.

To collectors of internal revenue:

Internal Revenue Circular No. 523, dated February 20, 1899, relating to the sale of leaf tobacco in quantities less than a hogshead, case, or bale, shall not be construed as applying to tobacco composing the breaks on the warehouse floors in the loose-leaf markets where it is sold at public auction to qualified dealers in leaf tobacco, or to qualified manufacturers of tobacco, snuff, or cigars, or to persons who buy leaf tobacco for export only.

Every person who buys loose leaf tobacco, composing the breaks on the warehouse floors, for the purpose of reselling the same at public auction, or at a private sale, without removal from the warehouse, is regarded as a dealer in leaf tobacco, and will be required to pay special tax and qualify as a leaf dealer at each place where he carries on business, and must keep a record of his purchases and sales in Book 59 for each place the same as other qualified leaf dealers.

Every qualified dealer in leaf tobacco who purchases loose leaf tobacco from the farmer or grower of the tobacco after it has been placed on the warehouse floors may resell the tobacco at that place without being required to repack or reprise the same in hogsheads, cases, or bales.

Loose leaf tobacco purchased outside of a public warehouse by a qualified dealer in leaf tobacco directly from the farmer or grower, before the same is offered for sale and delivery by such dealer, is required to be put up in hogsheads, cases, or bales, except that cigar leaf may be sold and delivered by him from his place of business to a licensed manufacturer of cigars in quantities less than a case or bale for use in his own manufactory exclusively.

In case the farmer or grower of tobacco delivers at a public warehouse two or more different grades of tobacco in a single package, the tobacco may be removed from the packages to the warehouse floors and assorted and divided into as many different and distinct lots as there

may be kinds or grades of tobacco contained in such package, the leaf, trash, lugs, and spots, or cigar wrapper, filler, and binder forming distinct lots, and each lot may be sold separately from the others without the owner or warehouseman being required to repack or reprise the same in a hogshead, case, or bale, and the purchaser in each instance may remove the tobacco from the warehouse in cases, tierces, bales, tobacco baskets, boxes, chests, or other receptacles which will inclose and protect the tobacco in transportation.

If the purchaser is a licensed leaf dealer, he will, upon removal of the tobacco from the warehouse, be required to repack it in hogsheads, cases, or bales before it is again offered for sale.

G. W. WILSON, *Commissioner*.

(21172.)

Relating to packing cigars and concerning peddlers and dealers in tobacco.

Cigars not properly packed, labeled, branded, and stamped subject to forfeiture.—

Peddlers of tobacco, snuff, or cigars required to register and file new bonds on July 1, 1899.—Collectors to forward list of names of dealers in tobacco who have made return and paid special tax of \$12 for present special-tax year.

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., May 23, 1899.

To collectors of internal revenue:

On account of the numerous reports received by the Commissioner relative to the improper and irregular manner in which manufacturers have packed, labeled, branded, and stamped their cigar packages, special attention is called to sections 3392, 3393, and 3397, Revised Statutes.

In a number of cases reported, cigars have been seized for forfeiture on account of the absence of the caution-notice label, or for the faulty cancellation of stamps, no factory number or date of cancellation appearing thereon, and the waved lines being entirely omitted. In other instances cigars have been forfeited for the reason that the boxes have contained a greater or less number of cigars than denoted by the stamp affixed thereon.

All cigars weighing more than *three pounds* per thousand are required to be packed in boxes not before used for that purpose and containing, respectively, 12, 13, 25, 50, 100, 200, 250, or 500 cigars, and to each box must be affixed an internal-revenue stamp denoting the number of cigars packed therein. The stamp must be so attached as to seal the box and render it impossible to remove the cigars without breaking the stamp.

The stamp must be canceled, by the use of a stencil plate or rubber

stamp, by six waved lines extending at least three-fourths of an inch beyond each side of the stamp, and the manufacturer must write or imprint on each stamp, in a legible and durable manner, his registered number, State, collection district, and date of cancellation. He is also required to stamp, indent, burn, or impress into each box, in a legible and durable manner, the number of cigars contained therein, the number of the manufactory, the number of the district, and the State.

Every manufacturer of cigars shall securely affix, by pasting, on each box containing cigars manufactured by or for him, a label on which shall be printed, besides the number of the manufactory and district and State in which it is situated, the caution notice, the form of which is prescribed by section 3393.

The failure of a manufacturer to comply with the above requirements will subject the cigars to forfeiture and make him liable to prosecution for violation of the statutes.

Special attention is also called to sections 3381, 3384, Revised Statutes, and to the regulations, series 7, No. 8, revised, pages 18 to 22, inclusive, which relate to peddlers of tobacco.

Collectors will at once prepare and forward to this office a list of the names of peddlers of tobacco in their respective districts whose bonds are now in force and who are required to register and file new bonds on July 1 next.

Collectors will also furnish the office with a list of the names of persons who have made returns on Form 11 and paid special tax of \$12 as dealers in manufactured tobacco, snuff, and cigars, as provided by act of June 13, 1898.

G. W. WILSON, *Commissioner*.

IMPORTANT ADDENDUM.

While this compilation was passing through the press the following important circular was issued, which modifies or revokes several rulings of the Internal-Revenue Office contained herein with respect to conveyances of realty, especially paragraph 102, page 295:

Ruling as to stamp tax on conveyances of real property under Schedule A of the act of June 13, 1898.

[Int. Rev. Circular No. 555.]

TREASURY DEPARTMENT,
OFFICE OF COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C., March 9, 1900.

To collectors of internal revenue and others:

The paragraph of Schedule A relating to the stamp tax on conveyances of real property is in the following language:

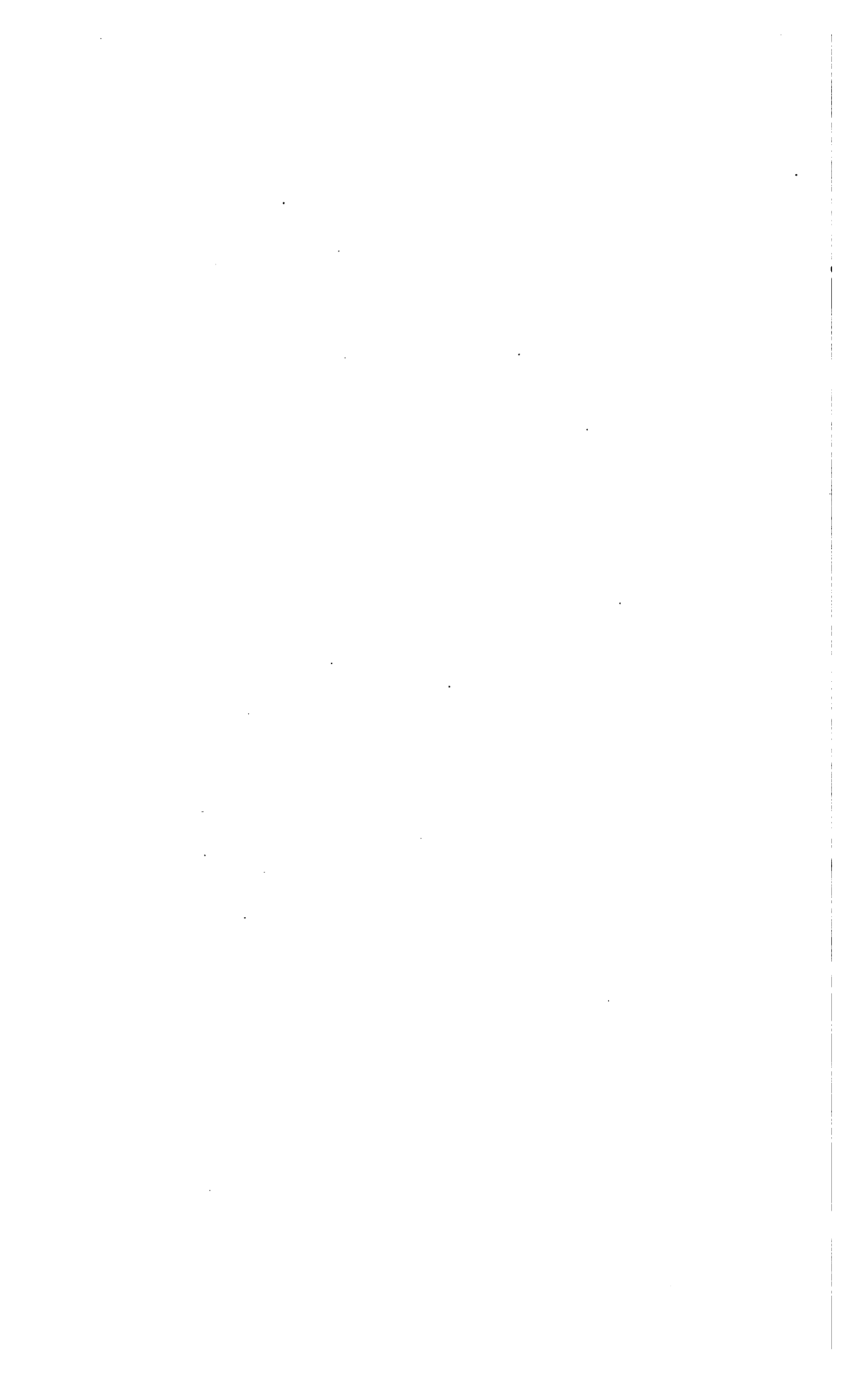
Conveyance: Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value exceeds one hundred dollars and does not exceed five hundred dollars, fifty cents; and for each additional five hundred dollars or fractional part thereof in excess of five hundred dollars, fifty cents.

In construing the above provision it is now held that it is only upon conveyances of "realty sold" that conveyance stamps are required, i. e., upon conveyances of realty where a valuable consideration, a benefit capable of estimation in money value, either passes, or has passed, or is to pass, from the grantee to the grantor.

The word *sold* as employed in the statute is used, in my opinion, not, as heretofore ruled by this office, in the technical sense of "purchase and sale" as contradistinguished from the taking by descent or operation of law, but in its ordinary meaning and acceptance.

The previous ruling upon this question, which is hereby reversed, was made under the advice of the honorable Attorney-General. I am in doubt concerning its correctness, and have decided henceforth to give the benefit of the doubt to the taxpayer. Inasmuch, however, as the former ruling may nevertheless be the correct one, taxes heretofore paid in compliance with it will not be refunded.

G. W. WILSON, *Commissioner.*



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